



2024-2025

Lincoln-Douglas
Debate Sourcebook

**Resolved: In the United States criminal justice system,
jury nullification ought to be used in the face of
perceived injustice.**

Table of Contents

Affirmative Case 1	4
Captive to the Conscience: The Moral Necessity of Jury Nullification (<i>by Ethan Tong</i>)	4
Affirmative Case 2	8
Preventing Abuse: Nullification as a Check on Governmental Power (<i>by Ethan Tong</i>)	8
Affirmative Case 3	12
Moral Correctness (<i>by Kate Markham</i>)	12
Negative Case 1	16
Predictable Unpredictability: Jury Nullification's Destabilizing Effect (<i>by Ethan Tong</i>)	16
Negative Case 2	19
Giving Each Man... One's Bias? The Injustice of Jury Nullification (<i>by Ethan Tong</i>)	19
Negative Case 3	23
Consistent Application of Law (<i>by Kate Markham</i>)	23

Affirmative Case 1

Captive to the Conscience: The Moral Necessity of Jury Nullification (by *Ethan Tong*)

On April 18 of 1521, a religious monk named Martin Luther was asked to recant his position that was critical of the Church. “I cannot and will not recant,” he said. “Acting against one’s conscience is neither safe nor sound. Here I stand; I can do no other.”¹ Unfortunately, in our legal system today, jurors are often prevented from acting on the same conviction. Without the power of jury nullification, jurors are forced to violate what their conscience dictates. To protect their choice and the sanctity of their conscience, I affirm the resolution: **In the United States criminal justice system, jury nullification ought to be used in the face of perceived injustice.**

Definitions

Let’s begin by defining our key term: **jury nullification**.

According to Cornell Law School, jury nullification is the process of returning a verdict that is inconsistent with the facts for some other reason.

“Jury nullification refers to a jury’s knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself, or because the result dictated by law is contrary to the jury’s sense of justice, morality, or fairness.”²

Jury nullification might occur, for example, when the defendant is guilty of breaking a law that is an unjust law. The jury would return a verdict of “not guilty,” even though the defendant did break the law.

¹ W. Thomas Smith, Jr. (an American author, editor, and journalist. He has written several books. His articles have appeared in many newspapers and magazines. Smith is executive editor of World Defense Review, a columnist with Townhall.com, and a former contributor to National Review Online.), “Here I Stand; I Can Do No Other: Commemorating the 500th anniversary of Martin Luther’s 95 theses”. Published in October 2017 at <https://columbiometro.com/article/here-i-stand-i-can-do-no-other/>.

² “Jury Nullification”. Published by Cornell Law, date unknown, at https://www.law.cornell.edu/wex/jury_nullification. Accessed July 25th, 2024.

Value and Criterion

In Lincoln-Douglas debate, debaters propose an ultimate standard—justice, human dignity, etc.—called a value. Whichever side upholds that value should get your ballot. I propose that we use the value of **liberty**. The American legal philosopher Gerald MacCallum defines liberty as when “[an] agent, is free from certain constraints, or preventing conditions, to do or become certain things.”³

Of course, people can abuse their right to liberty—violating their conscience and robbing a bank, for example. But in this instance, I think our liberty should be limited. We call that limitation a **criterion**—the way you know my value is fulfilled. I propose the criterion of **Deciding According to Conscience**. In other words, I’m not defending all examples of liberty. I’m only defending the liberty to decide according to one’s conscience.

Why is that liberty so important? We can see why in

Contention 1: Governments Should Not Violate the Conscience

America’s Founders recognized that the protection of liberty stands as the crux of a well-governed state. As Professor Steve H. Hanke writes for the Cato Institute,

“the Framers agreed that the purpose of government was to secure citizens in John Locke’s trilogy of the rights to life, liberty, and property.”⁴

And the right to liberty isn’t just a right to do—it’s a right to think, a right to believe. Any government who mandates certain beliefs is a tyrannical government. Cornell Law writes,

“The Supreme Court has expressly recognized that a right to freedom of association and belief is implicit in the First, Fifth, and Fourteenth Amendments.”⁵

³ Ian Carter (professor of Political Philosophy at Pavia University in Italy), “Positive and Negative Liberty”. Published by the Stanford Encyclopedia of Philosophy in 2021 at <https://plato.stanford.edu/entries/liberty-positive-negative/>.

⁴ Steve H. Hanke (a professor of applied economics and founder and codirector of the Institute for Applied Economics, Global Health, and the Study of Business Enterprise at the Johns Hopkins University in Baltimore), “Democracy or Liberty?”. Published by the Cato Institute on January 21, 2021 at <https://www.cato.org/publications/commentary/democracy-or-liberty>.

⁵ “First Amendment.” Published by Cornell Law, no date, https://www.law.cornell.edu/wex/first_amendment#:~:text=The%20Supreme%20Court%20has%20expressly,Unive%20rsal%20Declaration%20of%20Human%20Rights. Accessed July 25, 2024.

And America has long expanded this principle beyond just cognitive beliefs. Our country protects a person's right, not just to believe, but to *act* according to their conscience within reason. A Jewish or Sikh attorney need not discard his religious head covering in the courtroom. A Seventh-Day Adventist need not be on the frontlines, shooting enemies in war.

Of course, this doesn't mean someone can murder another person just because their conscience tells them to. But that's not the case we're presented with today. Today, we're only asked if a juror who believes a person is being punished unjustly should be forced to find that person guilty. We believe the answer is no, as explained in

C2: Nullification Protects Jurors' Consciences

Jury duty, especially in high-stakes trials, takes a toll on jurors. According to a study published in Volume 29 of the Justice System Journal, over 60% of respondents found their service "emotionally upsetting," and 36% had trouble sleeping or eating during or after the trial.⁶ The fact is that, just as executioners may feel guilt and even feel haunted by capital punishment, jurors feel the same way.

Yet the negative would have you believe that jurors should not be allowed to vote according to their conscience. They would have you believe that a juror should be required to vote guilty to a person who broke an unjust law. The following illustration is illuminative of this fact.

Application: Fugitive Slave Law

In 1851, a group from Massachusetts were put on trial. Their crime? Aiding a slave in his escape. Shadrach Minkins had escaped from his owners weeks prior. As he passed through Massachusetts, a few men housed and fed him. Now, they were on trial for aiding a slave, which violated the Fugitive Slave Law.⁷

What were the jurors to do? Were they to send men to prison for helping a black man who was escaping torture and enslavement? Perhaps surprisingly, the jury did the right thing and acquitted the group. Despite the fact that the law clearly said these men were guilty, the jury found them innocent because the law was unjust.

⁶ Dr. Michael E. Antonio (the Lead Research Scientist at Pennsylvania's Department of Corrections and the Board of Probation and Parole from 2006-2013), "STRESS AND THE CAPITAL JURY: HOW MALE AND FEMALE JURORS REACT TO SERVING ON A MURDER TRIAL." Published by The Justice System Journal, Volume 29, no 3 in 2008 at https://ncfsc-web.squiz.cloud/_data/assets/pdf_file/0021/16635/stress-and-the-capital-jury.pdf.

⁷ Collison, Gary. "This Flagitious Offense': Daniel Webster and the Shadrach Rescue Cases, 1851-1852." *The New England Quarterly* 68, no. 4 (1995): 609–25. <https://doi.org/10.2307/365877>.

Naturally, you might be worried about other cases where the outcome is not the same—perhaps, where a juror believes possession of a small amount of marijuana should not be punished and acquits a person who has drugs. But as the famous jurist William Blackstone said, “It is better that ten guilty persons escape, than that one innocent suffer.”⁸ Jury nullification allows the innocent to be freed from unjust punishment. But more importantly, it allows the conscience of the juror to remain clear.

To force a juror to make a ruling against his or her will is the sign that our nation is trending away from the principle of liberty. We don’t force a Muslim to shave his beard in prison. We don’t force a conscientious objector to murder in war. We shouldn’t force a juror to sentence someone when they believe they ought not be sentenced. Thank you, and I now stand open for cross-examination.

⁸ Alexander Volokh (associate professor of law and joined the Emory Law faculty in fall 2009), “N Guilty Men,” *University of Pennsylvania Law Review* 146 (1997): 173-216.

Affirmative Case 2

Preventing Abuse: Nullification as a Check on Governmental Power (by *Ethan Tong*)

The concept of Trial by Jury has been considered a sacred American right for centuries. It protects against bureaucratic collusion, against classism, against the influence of “friends in high places.” It allows us to avoid the government locking up whoever they choose. Indeed, John Adams wrote, “Representative government and trial by jury are the heart and lungs of liberty.”⁹ The message behind Trial by Jury is simple: The People can decide. That’s exactly why jury nullification is important: because it allows the people to decide guilt. Therefore, I stand resolved: **In the United States criminal justice system, jury nullification ought to be used in the face of perceived injustice.**

Definitions

Before we proceed, it’s important that we establish our ground rules with the main definition.

The Cato Institute defines jury nullification as, “The power of jurors to not enforce the letter of the law and to instead seek justice in deciding their verdict is commonly referred to as jury nullification.”¹⁰

In other words, jury nullification happens when a juror believes the law or punishment is unjust and votes to acquit the defendant. To clarify, this isn’t just when a juror thinks a punishment is *mean* or *harsh*. The resolution specifies that the juror believes there is *injustice*. You can write down this point as

Resolutional Analysis: Injustice, not Dislike

Many who are opposed to jury nullification are afraid that someone might “feel bad” for the defendant or “dislike” the punishment and let them off the hook. Perhaps that is possible. But our resolution clarifies that I am not required to defend all instances of jury nullification. I am only required to defend jury nullification in the face of *injustice*, the resolution states. So the only times in which nullification would occur would be in times of injustice.

⁹ “TRIAL BY JURY: “INHERENT AND INVALUABLE””. Published by the West Virginia Association for Justice, no date, at <https://www.wvaj.org/?pg=HistoryTrialbyJury>. Accessed July 25, 2024.

¹⁰ “A Historical Look at the Power of Jury Independence.” Published by the Cato Institute in January/February 2014 at <https://www.cato.org/policy-report/january/february-2014/historical-look-power-jury-independence>.

Value

Why should jury nullification be used in times of injustice? Because it acts as a check on governmental power. You can write down my value, or what I propose should be the highest standard in this discussion, as **value: preventing governmental abuse**. Whichever side best prevents the government from abusing power should prevail. Why should this be the value? Because preventing abuse is the purpose of juries in the first place.

Contention 1: Preventing Government Abuse is the Purpose of Juries

According to Britannica, the “Star Chamber” was an often-used court in English law in the 16th-17th centuries. It was “made up of judges and privy councillors that grew out of the medieval king’s council as a supplement to the regular justice of the common-law courts.”¹¹ As time went on, complaints began to arise about these courts. Because they were made up of the king’s council, they often rubber-stamped his agendas and convicted dissidents. Charles I, for instance, used them to enforce unpopular political and church-related policies.¹² Looking back, our Supreme Court has described the Star Chamber as “symboliz[ing] disregard of basic individual rights.”¹³

If you’ve ever wondered why we don’t just have sitting judges—who are trained on the law, with decades of experience—rule on cases, it’s precisely because of things like the Star Chamber. Our Founders were adamant that juries ought to be made up of members of the public, not judicial and political elites. The judicial and political elites may *know* a lot, but they may be too heavily influenced by biases that are present in the upper stratosphere of law. There’s a reason why Founding Fathers like Adams, Jefferson, Hamilton, Madison, Patrick Henry, George Mason, Elbridge Gerry, and many others—including former Chief Justices William Rehnquist and John Jay—have specifically written to defend the right to trial by jury.¹⁴ It’s not just an afterthought. It’s the underpinnings of government by the people and for the people. Without it, governments can pay, bribe, befriend, or even just appoint judges who will agree with their policies and against certain individuals. So how do we prevent abuse?

¹¹ “Star Chamber.” Published by Britannica, no date, at <https://www.britannica.com/topic/Star-Chamber>. Accessed July 25, 2024.

¹² Same as above.

¹³ “Faretta v. California.” Published by JUSTIA, decision released June 30, 1975 at <https://supreme.justia.com/cases/federal/us/422/806/#821%E2%80%939322>.

¹⁴ “TRIAL BY JURY: “INHERENT AND INVALUABLE””. Published by the West Virginia Association for Justice, no date, at <https://www.wvaj.org/?pg=HistoryTrialbyJury>. Accessed July 25, 2024.

Contention 2: Jury Nullification Prevents Government Abuse

Though we might want to think that our government’s laws are all perfect, that simply isn’t true. In our history, we’ve had racist laws against blacks, Japanese, Chinese, and countless others. We’ve had laws against political dissent. We’ve had laws against religion. Without jury nullification, jurors would be forced to agree to the government’s injustices in the name of “obeying the laws.”

I’ll provide two examples of how jury nullification can prevent government abuse.

Application 1: Vietnam War

In 1971, a group of Catholic anti-war activists entered a draft board office and destroyed thousands of documents that would have allowed the U.S. to draft men to fight in the Vietnam War. They didn’t harm anyone or destroy anything else except those documents. When they were caught and tried, the judge announced that they would have to spend up to 47 years in prison if convicted, because the law labeled their efforts felonious.¹⁵ Surprisingly, despite the evidence, the jury acquitted the group, since the sentiment around that area was anti-war.

That’s precisely the point of jury nullification. If the government engages in a brutal, blood-spilling war that the public is opposed to, and then criminalizes dissent, then the people can check the government by nullifying the convictions.

Application 2: Prohibition Era

Professor of Law Doug Linder writes,

“In the Prohibition Era of the 1930s, many juries practiced nullification in prosecutions brought against individuals accused of violating alcohol control laws.”¹⁶

And as these nullifications continued, eventually, the government took notice. As attorney Sherilyn Streicker writes,

¹⁵ Lori Walsh (the host and senior producer of *In the Moment*, SDPB’s daily news and culture broadcast.), “The Camden 28: Standing Against The Vietnam War”. Published by SDPB on September 8, 2017 at <https://www.sdpb.org/margins/2017-09-08/the-camden-28-standing-against-the-vietnam-war>.

¹⁶ Doug Linder (Professor of Law at the University of Missouri, Kansas City received his J.D. from Stanford Law School.), “Jury Nullification.” Published by UMKC in 2001 at <http://law2.umkc.edu/faculty/projects/ftrials/zenger/nullification.html>.

“[A] consistent pattern of acquittals for prosecutions of a certain offense can have the practical effect of invalidating a statute. In fact, the pattern of jury nullification in alcohol prosecutions contributed to the adoption of the 21st Amendment, which repealed Prohibition.”¹⁷

Perhaps you think that if someone is opposed to a law, they should just make the changes at the legislative level. But jury nullification can affect the democratic processes and speed them up.

Justice Byron White in *Duncan v. Louisiana* stated “A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government.”¹⁸ Preventing jury nullification effectively nullifies this check. Thank you; I now stand open for cross-examination.

¹⁷ Sherilyn Streicker (Attorney who specializes in investigative law, fraud, white collar crime, campaign finance, identity theft, administrative law, high technology, and privacy), “Jury Nullification: Cause and Effect.” Published by Nolo’s Legal Encyclopedia, no date, <https://www.nolo.com/legal-encyclopedia/what-jury-nullification.html>. Accessed July 25, 2024.

¹⁸ Sherry Colb (Sherry F. Colb was the C.S. Wong Professor of Law at Cornell University.), “A Fresh Look at Jury Nullification”. Published by Verdict (Legal Analysis and Commentary from Justin) on May 18, 2017 at <https://verdict.justia.com/2017/05/18/fresh-look-jury-nullification>

Affirmative Case 3

Moral Correctness (by Kate Markham)

“When injustice becomes law, resistance becomes duty.” It is because I agree with the words of Thomas Jefferson that I affirm today’s resolution, and stand resolved that **in the United States criminal justice system, jury nullification ought to be used in the face of perceived injustice.**

Definitions

Let’s start with a key definition-- jury nullification. As defined by NOLO Law Encyclopedia in 2024, “Jury nullification occurs when a trial jury reaches a verdict that is contrary to the letter of the law because the jurors either: disagree with the law under which the defendant is prosecuted, or believe that the law shouldn’t be applied in the case at hand.”¹⁹ It is also important to note that this resolution is limited exclusively to criminal trials, or cases where the government is prosecuting an individual or entity for a violation of the law.

Framework

Let’s take a look at some framework for this case. First my *value*, or the concept I believe is most important to protect in this round. My value today is *Justice*, defined by Cambridge Dictionary as “the condition of being morally correct or fair.”²⁰ I’d like to draw special attention to the use of the word ‘morally’ here: because morality and legality are not synonymous. Now, I’ll provide a *criterion*, or the concrete actions we should take to protect my proposed value of justice. In today’s round, my *criterion* is *upholding the purpose of the law*. I propose this criterion based on the definition of the purpose of law, as described by [Lumen Learning](#), is to “protect [the] various liberties and rights [in the constitution] from violations or unreasonable intrusions.”²¹ While the justice system often does this effectively, there are some important

¹⁹ “Jury Nullification Definition.” Www.Nolo.Com, www.nolo.com/dictionary/jury-nullification-term.html. Accessed 7 Aug. 2024.

²⁰ Justice | Definition in the Cambridge English Dictionary, dictionary.cambridge.org/us/dictionary/english/justice. Accessed 7 Aug. 2024.

²¹ Learning, Lumen. “Introduction to Business.” The Meaning and Purposes of Law | Introduction to Business, courses.lumenlearning.com/suny-wmopen-introbusiness/chapter/meaning-and-purposes-of-the-law/#:~:text=the%20court%20system,-.Protecting%20Liberties%20and%20Rights,persons%2C%20organizations%2C%20or%20government. Accessed 7 Aug. 2024.

exceptions that need to be taken into account. In those moments, jury nullification allows for justice to be upheld.

Contention 1: Legality and Morally are Not Equivalent

Unfortunately, the law is not always a good standard of what is moral. Jim Crow laws, slavery, and domestic abuse were all legal until shockingly recently in the United States, even though these things are all clearly wrong. Similarly, free speech in wartime, helping enslaved individuals reach freedom, and voting if you weren't a white landowning man were all illegal at various points in our country's history. It's clear that the laws are often in direct conflict with rights we are promised as Americans like free speech and liberty. This is why it's so essential that juries exercise their right to make just *and* moral judgments using jury nullification. What the law says and what is right are not always the same.

Contention 2: Neg Leaves No Room For Exceptional Cases

What happens when someone is legally guilty, but not morally culpable? With jury nullification, the legally mandated punishment doesn't need to be inflicted on someone who doesn't deserve it. For example, we can consider the case of John Peter Zenger. According to first assistant bar counsel Paul Jensen, "[John Peter Zenger \(1697-1746\) was the printer of the New-York Weekly Journal, the only independent newspaper in the colony of New York. The Journal was critical of the colonial governor, William Cosby, accusing him and his administration of tyranny and violation of the people's rights. Crosby decided to take action against the Journal by targeting Zenger, perhaps figuring that, without a printer, the Journal could not be published. On November 17, 1734, Zenger was arrested for "seditious libel," which is the act of publishing material that brings the government into contempt.](#)" Because Zenger was publishing informative, independent information, the jury found him innocent even though he was technically breaking the law by challenging the government. This spared Zenger from punishment, and meant that he could continue his work challenging the unjust governor of his colony. This is a key example of the power of jury nullification-- even though he had committed a crime, Zenger had not done anything morally wrong, and the jury found that he did not deserve a punishment.

Contention 3: Aff Brings Wide-Ranging Benefits

Jury nullification isn't just a powerful tool to ensure justice in individual cases-- it also results in many useful benefits that have positive impacts far beyond a single courtroom. In this case, we'll examine three.

- a. JN Allows for Exceptions Without Changing the Law
 - i. You may be asking yourself-- if a law is wrong, why wouldn't we just change the law? The answer is that often, the law itself is generally good. We can all agree that murder should be illegal. But if an abused woman shot her husband in self defense as he moved to hurt her children, should she face the same punishment as a serial killer? Because the law criminalizing murder is generally good, it shouldn't be repealed. But unfortunately, this means that particular woman could be sentenced to a lifetime in prison for an action that didn't warrant that punishment. With jury nullification, a group of people familiar with all the details of her unique case would get to decide if she is an exception to a generally good rule.

- b. JN Can Protest Unjust Laws
 - i. Jury nullification can also be a useful tool when a law is immoral. For example, the Fugitive Slave Act of 1850 made it illegal to assist a fleeing slave in any way. Even offering a meal could result in a prison sentence. In protest, dozens of American juries acquitted those charged under the law, ensuring that they wouldn't be punished for helping those who were escaping their abusers. There was also a bigger impact to their actions-- eventually the prosecutors in many states simply stopped charging individuals who had helped escaped slaves, because they knew the juries would likely acquit them anyway. This courtroom protest signaled to the state and eventually the federal government that it was viewed as an unjust law. This helped to accelerate its repealment. For laws that are truly unjust, jury nullification can prevent prosecution and even show the government when citizens are displeased with a policy.

- c. Deters Immoral Prosecution Strategies
 - i. Over the course of a trial, a jury is shown lots of evidence regarding the case at hand. Unfortunately, police and prosecutors sometimes use unethical means to arrest or achieve convictions. When jurors see evidence of immoral practices leading up to the trial, they can choose to acquit someone who never should have been charged in the first place. As a result, jury nullification can actually help to deter unethical practices by police and state prosecutors, thus helping to ensure the rights of individuals and the sanctity of the justice system as a whole.

Conclusion

Today, I argue that jury nullification should be used in the case of perceived injustice because justice is the most important value at stake in today's round. By allowing jurors to acquit in

exceptional individual circumstances, as well as when a law is wrong or the government does something unethical, the purpose of law-- the protection of rights for all, is upheld. For these reasons, I urge an affirmative ballot and now stand open for my opponent's questions.

Negative Case 1

Predictable Unpredictability: Jury Nullification's Destabilizing Effect (by *Ethan Tong*)

In the 1878 case of *Reynolds v. United States*, our Supreme Court warned that allowing a person's personal beliefs to override the laws of the land would be "permit[ting] every citizen to become a law unto himself."²² Yet today, that's exactly what the affirmative is proposing: that jurors be allowed to decide the laws for themselves. To promote stability, I stand resolved: **In the United States criminal justice system, jury nullification ought NOT be used in the face of perceived injustice.**

Definitions (if you disagree with their definition only)

To begin, let's set out a definition of jury nullification. According to the *American Criminal Law Review*,

"Jury nullification occurs when jurors, based on their own sense of justice, refuse to follow the law and acquit a defendant even when the evidence presented seems to point to an incontrovertible verdict of guilty."²³

Before we go further, I'd like to clarify something about the resolution.

Resolutional Analysis: America Only

It's important to note that the resolution specifies that this debate is happening only in an American context. In other words, the problems that face other countries aren't for discussion in today's debate. Perhaps other countries have extremely unjust laws that sentence people to death for things that we wouldn't even consider a crime. But in America, we don't have laws that behead for stealing, or laws that jail journalists who disagree with the government. And America is the only country we're discussing.

²² "Reynolds v. United States." Published by Justia, released on January 6, 1879 at <https://supreme.justia.com/cases/federal/us/98/145/>.

²³ JB Weinstein (a United States district judge of the United States District Court for the Eastern District of New York), "Considering Jury Nullification: When May and Should a Jury Reject the Law To Do Justice". Published by the American Criminal Law Review in Winter of 1993 at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/considering-jury-nullification-when-may-and-should-jury-reject-law>.

Value and Criterion

With this clarification in mind, let's turn to the value, or what I propose to be the ultimate standard in this round. You can write down my value as **stability**. What I'm referring to is the kind of societal stability that is promoted by the rule of law. Therefore, I propose the criterion of **predictability**. In other words, I propose that the side that should win is the one that promotes stability by promoting predictability in the legal field. We'll see this proven in two contentions.

Contention 1: Deciding on the Evidence is Predictable

The core of jury nullification is a juror's decision to go against the evidence. It is not, as some might assume, when a jury acquits someone because they're not sure if they are guilty. That's just normal doubt. That's completely within the rules. But when a juror *knows* the evidence clearly condemns a person but decides to acquit them for personal reasons of "unfairness," that is a fundamentally destabilizing decision.

The point of the court system is that everyone is equal under the law. That's why Lady Justice is blindfolded. She doesn't care who's in her courtroom—she is only administering the right decision. When jurors are encouraged not to nullify results they "don't like," that promotes predictable rulings. And we have fairly predictable rulings now. A journal article from Cornell Law Faculty Publications found that

"Taken as a whole, the work reveals that **there are substantial relationships between the strength of the trial evidence and jury verdicts, powerful linear relationships between the severity of a plaintiff's injury and the eventual jury damage award, and strong, predominantly linear (in logs) relationships between compensatory damage awards and punitive damage awards.**"²⁴

What all that means is juries routinely convict if there is good evidence. They routinely award more damages for stronger injuries. In other words, they're relatively predictable. And predictable juries make society more stable—prosecutors know their work will be worthwhile; defense attorneys know that if they provide good evidence they can get their client an acquittal. The bereaved can be confident that the defendant will receive justice.

All of that changes with jury nullification.

²⁴ Valerie P. Hans and Theodore Eisenberg (Professors of Law at Cornell), "The Predictability of Juries" (2011). Cornell Law Faculty Publications. Paper 202. <http://scholarship.law.cornell.edu/facpub/202>

Contention 2: Deciding against the Evidence is Destabilizing

When jurors decide that they do not want to follow the evidence, no matter how damning, that promotes unpredictable results. But don't just take my word for it, because studies back this up. One such study found that jurors were more biased by their emotions when told that they could decide against the clear evidence. That study, published by the Northern Illinois University Law Review, facilitated a mock trial over a euthanasia doctor. Even though the doctor clearly and without a doubt violated the law against euthanasia, the jurors were asked, should he be convicted? The study found that when the jury was instructed that they could nullify, their emotions came into play.

“The findings revealed that only when jurors were in receipt of nullification instructions in a trial which involved euthanasia, were jurors vulnerable to emotionally-biasing information.²²⁸ Specifically, these jurors were more likely to acquit the physician-defendant when the deceased was a very unsavory, indeed repellent, character (the emotional bias) rather than when the victim was portrayed in positive terms. We found that emotional biases did not affect evidence processing but did affect emotional reactions and verdicts, providing the chaos theory its strongest empirical support yet reported.”²⁵

To put it another way, when jurors are told that they can alter their decision based on their personal feelings about a law, they begin to factor in unpredictable elements, like their feelings. That is profoundly destabilizing to a society that needs the rule of law to operate well.

I'll close with the words of Judge Howard Leventhal:

“To tell [a juror] expressly of a nullification prerogative . . . is to inform him, in effect, that it is he who fashions the rule that condemns.”²⁶ Thank you. I now stand open for cross-examination.

²⁵ Irwin A. Horowitz (writer for the Northern Illinois Law Review), Jury Nullification: An Empirical Perspective, 28 Northern Illinois University Law Rev. 425 (2008).

<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1201&context=facpub>.

²⁶ Same as above.

Negative Case 2

Giving Each Man... One's Bias? The Injustice of Jury Nullification (by *Ethan Tong*)

Everyone has heard the classical definition of justice as “giving each man his due.” But jury nullification flips that on its head. Instead of delivering justice according to the evidence, juries are allowed to disagree with the law and ignore the question they are presented with in favor of their personal views on the law or punishment. Because jury nullification is a perversion of justice, I stand resolved: **In the United States criminal justice system, jury nullification ought to NOT be used in the face of perceived injustice.**

Definitions (if you disagree with their definition only)

To begin, let's set out a definition of jury nullification. According to Forbes Legal Editor Jeffery Johnson, J.D.,

“Jury nullification occurs when a jury returns a not guilty verdict in a criminal case where the jury believes that the defendant has, beyond a reasonable doubt, committed a crime. In other words, the jury believes that the defendant has broken the law, but still decides not to convict.”²⁷

With that established, I want to establish one point of resolutional analysis for this round.

Resolutional Analysis: Individual Juror as Actor

The “actor” in any given resolution is the person who is executing the resolution: the one who is carrying it out. In this case, it seems clear that the actor is an individual juror. They are the only ones who could use or not use jury nullification in the face of perceived injustice. Therefore, all arguments aren't about what policies the government should propose, what instructions the judge should give, or anything like that; instead, it should center around what the individual should or should not do. I argue as negative that the individual juror should not use nullification. Why is that?

²⁷Jeffery Johnson, J.D., (Forbes Legal Editor), “Understanding Jury Nullification: Definition, Examples, And Implications.” Published by Forbes Advisor on October 19, 2023 at <https://www.forbes.com/advisor/legal/criminal-defense/jury-nullification/>.

Value

I believe the main reason a juror should avoid nullification is because of justice. You can write that down as my **value: justice**. I propose that we define justice as broadly “doing things rightly.” Before I get to how jury nullification does not do things rightly, I want to defend why justice is the most important value. There are two reasons. First, **the topic context**. The highest value in court *has* to be justice. If you value anything else higher than justice, you have abandoned the concept of right and wrong. Second, justice is **non-abusable**. You can never do “too much” justice. You should always strive for justice because it’s safe to do so.

There are two reasons why jury nullification abandons this duty to do justice.

Contention 1: Deciding Against the Evidence is Unjust

One can make the high-minded claim that a juror has some duty to rule how he perceives justice. But each juror takes an oath—one that precludes him from doing so. In Texas, the oath goes as follows:

“You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God.”²⁸

The person swears under this oath that they will (1) render a verdict according to the law, and (2) render a verdict according to the evidence. Deciding that the law is invalid is not an option. Deciding that the evidence doesn’t matter is not an option. That’s why Jeffrey Johnson, whom I quoted early, says

“It is technically a violation of the oath jurors take to participate in this sort of action. Although it cannot be prosecuted, it is still an action that is in conflict with a sworn oath.”²⁹

The question you are asked to decide as a juror is *not* whether you think he ought to be in prison. It’s not whether you think he ought to be punished. The question is one of fact: did he in fact do

²⁸ “Tex. R. Civ. P. 236.” As amended through June 28, 2024. <https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-10-the-jury-in-court/rule-236-oath-to-jury>.

²⁹Jeffery Johnson, J.D., (Forbes Legal Editor), “Understanding Jury Nullification: Definition, Examples, And Implications.” Published by Forbes Advisor on October 19, 2023 at <https://www.forbes.com/advisor/legal/criminal-defense/jury-nullification/>.

the things that the law has forbidden? To ignore that question and to answer another one is to act wrongly—to abandon your promise, go back on your sworn duty. That is a violation of justice.

Contention 2: Allowing Personal Preferences is Unjust

The key word in our resolution is *perceived*. If the juror decides to nullify despite the evidence, it is only because he or she *perceives* injustice. And that means jurors will often perceive incorrectly.

A 2008 study was conducted on jury nullification. They provided juries with one of three instructions: standard instructions, which don't mention nullification, instructions which hint at nullification, and instructions which explicitly informed the jurors of their ability to decide against the evidence if they so choose. The study found the following:

“Content analyses of the juries' deliberations showed that when given radical nullification instructions, juries discussed the evidence less and focused more on the instructions, characteristics of the defendant, and personal experiences of the jurors. This suggests that when the nature of a case evokes sympathy for a defendant (as in the euthanasia case), nullification instructions have the effect of liberating the jury from the evidence in reaching their verdicts, leading to a greater tendency to acquit. Conversely, when defendants are unsympathetic (as in the drunk driving case), nullification instructions led to a greater tendency to convict.”³⁰

It is no justice when jurors ignore the law in favor of their biases and emotions. Take as an example trials over lynchings. As Professor of Law Monroe Freedman notes,

“Just as free speech is sometimes used on behalf of “bad causes,” so will jury nullification. The most egregious examples of nullification have been when southern juries regularly acquitted plainly guilty perpetrators of lynchings of African-Americans”³¹

If we allow individuals to nullify whenever they “perceive” injustice, it is possible that some good results may come. But bad results will also follow. And in America, where the laws are generally agreed upon—where we don't have flagrantly unjust laws criminalizing trivial things—the more likely story is that nullification will be used to promote injustice.

³⁰ Irwin A. Horowitz (writer for the Northern Illinois Law Review), Jury Nullification: An Empirical Perspective, 28 Northern Illinois University Law Rev. 425 (2008).

<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1201&context=facpub>.

³¹ Monroe H. Freedman (Professor of Law at Hofstra University), “JURY NULLIFICATION: WHAT IT IS, AND HOW TO DO IT ETHICALLY.” Published by the Hofstra Law Review in 2010 at https://www.hofstralawreview.org/wp-content/uploads/2014/08/CC2.Freedman.final2_.pdf.

We can't forget that acquitting defendants has a cost—not just to potential future victims, but to the family of the one who was victimized. When we allow jurors to rewrite our laws as they see fit, we ignore the voices of those whose only defense is settled law. If there is truly a problem with the law, it can be settled by legislative processes, not by jurors becoming mini-legislators. The just duty of a juror is to settle the facts according to the law. Jury nullification violates this duty. That's why I urge a negative ballot. Thank you.

Negative Case 3

Consistent Application of Law *(by Kate Markham)*

“If we do not maintain justice, justice will not maintain us.” It is because I agree with the words of Francis Bacon that I negate today’s resolution, and stand resolved that **in the United States criminal justice system, jury nullification ought NOT to be used in the face of perceived injustice.**

Definitions (if you disagree with their definition only)

Let’s start with two definitions. First, jury nullification. As defined by NOLO Law Encyclopedia in 2024, “Jury nullification occurs when a trial jury reaches a verdict that is contrary to the letter of the law.”³² The second is perceived, defined by Cambridge as “to come to an opinion about something, or have a belief about something.”³³ To sum up-- this resolution argues that a jury should make a judgment contrary to the evidence if they believe that there is injustice present-- not if there is injustice proven to be present. This resolution is also limited only to criminal trials, where the government is prosecuting due to a violation of the law, and does not include civil trials.

Framework

My *value*, or the thing I think is most important to protect in today’s round, is *justice*. Britannica Dictionary defines justice as “the process or result of using laws to fairly judge and punish crimes and criminals.”³⁴ My *criterion*, or the way we can best uphold this value, is *consistent application of the rule of law*. By applying the law universally and ensuring every criminal gets a fair, objective trial, we can ensure that justice is protected.

³² Heffernan, Shannon. “Jury Nullification.” *Life of the Law*, 12 Feb. 2017, www.lifeofthelaw.org/2014/06/jury-nullification/.

³³ *Perceive* | Definition in the Cambridge English Dictionary, dictionary.cambridge.org/us/dictionary/english/perceive. Accessed 7 Aug. 2024.

³⁴ *Encyclopædia Britannica*, Encyclopædia Britannica, inc., www.britannica.com/dictionary/justice. Accessed 7 Aug. 2024.

Contention 1: Aff Mixes Justice With Personal Opinions

By definition, justice requires us to use laws to decide what is legal and what is not. Jury nullification is the act of a jury seeing sufficient evidence to find someone guilty and choosing to acquit anyway. Every person will have a different opinion of what is right and wrong. This is why we need a justice system that applies a universal standard of legality to everyone. Jury nullification throws this out by allowing a few people's personal opinion of what is right to determine the decision of a trial. If someone is going to be acquitted, it should be because they're innocent, not because 12 people decided to ignore evidence. The dangers of jury nullification have resulted in some truly terrible people walking free. To illustrate the dangers of letting personal opinion determine the outcome of a trial, let's look at the case of Roy Bryant and J. W. Milam. In 1955, these men were brought to trial for the brutal murder of a 14 year old black boy named Emmett Till. *The Life of Law* wrote regarding the case, "The evidence was clear. Later, the two white defendants would even admit to the murder. But the all white jury found the white defendants innocent...""The risk [of jury nullification] is people get away with murder," says Crammer. "And they get away with murder because the juries in those cases regarded the defendants as more valuable than the victims. So if we allow jury nullification, it doesn't work, [the justice] system's over. It's broken."³⁵ In this case, the jurors were acting in accordance with the affirmative position. They perceived that it was unjust for white men to be punished for the murder of a black child, and so they let them walk away free. This demonstrates exactly why justice should not be subject to a jury's personal beliefs.

Contention 2: Acquittals are Final

We all know that in America, everyone is innocent until proven guilty. But did you know that if a jury finds someone innocent, the defendant cannot be brought back to trial for the crime? This means that if a jury chooses to apply jury nullification and acquits someone who is guilty, that person can never be brought back to trial, even if they admit to the crime later. *Law Info* explains this, saying "If the jury acquits you of a specific charge, you can't go back to trial for that charge again."³⁶ In the case of Emmett Till, as we heard, the men who committed the murder were guilty beyond doubt and admitted to their crime. But because the jury ignored this and let them walk free, they could not ever be brought to trial for Till's murder again. If a jury uses jury nullification, it is not a mistake that can be easily corrected-- it is final.

³⁵ Heffernan, Shannon. "Jury Nullification." *Life of the Law*, 12 Feb. 2017, www.lifeofthelaw.org/2014/06/jury-nullification/.

³⁶ *Acquittal Definition* | *Lawinfo*, www.lawinfo.com/resources/criminal-defense/acquittal-definition.html. Accessed 7 Aug. 2024.

Contention 3: Legal Avenues to Challenge Bad Laws

A common argument in favor of jury nullification is that it can be used to circumnavigate bad laws. And it's true, the legal system is not perfect and sometimes prosecutes people who may not deserve a punishment. But there are legal avenues to make laws more just. USA.gov explains that politicians and citizens can petition for laws to be added or removed at the local, state, and federal levels. If someone believes a law is truly unjust, there is a legal way to change it. Jury nullification bypasses legal processes by allowing jurors to provide judgements contrary to evidence. But even if jury nullification is being used for a single good outcome this is only one judgment. A better way to protect justice would be petitioning for a change in the law as a whole, ensuring law-based justice for everyone, rather than hoping a jury is made of 12 people who will make the right choice. Even when jury nullification produces a "good" outcome, there is a better way to ensure that everyone will get that good outcome in the future.

Conclusion

So in review-- jury nullification is dangerous because it allows personal opinions to override the law. This could result in unjust verdicts and criminals permanently walking free, and even the best-case scenario produced by jury nullification is not as beneficial as using existing legal avenues to ensure justice for all. Consistent application of the law is the best way to protect justice, and therefore, jury nullification should not be used.