

to the Revolutionary War, American juries repeatedly refused to convict John Hancock and other agitators who were brought to trial on charges of smuggling, because they viewed the defendants' activities as principled acts of defiance rather than crimes. During the 1850s, juries in the North regularly refused to enforce the Fugitive Slave Act, which had been passed at the insistence of the South in 1850 and made it illegal for anyone to assist a runaway slave. Southern anger at northern "lawlessness" and northern anger at southern "overreach" became major issues of contention in the years leading up to the Civil War.

The practice of jury nullification and the spirit of civil disobedience that inspired it also inspired other, less savory actions. For instance, in the 1950s and 1960s, many white juries in the South would not convict white citizens who assaulted and sometimes killed civil rights workers. The federal government responded by enacting new guidelines for jury selection that made juries more representative of the community as a whole. Women, minorities, and poor whites began to sit on juries after centuries of exclusion.

Despite the important role that jury nullification has played in U.S. history, authorities have never been eager

to publicize this right. Many states bar defense lawyers and judges from even mentioning that jurors may set aside a law. Still, state constitutions in Georgia, Oregon, Indiana, and Maryland include provisions guaranteeing the right of jurors to "judge" or "determine" the law in "all criminal cases." Courts in those states have held that a jury has the power—but not the right—to acquit a guilty person but that jurors should not be told that they may ignore or nullify the law. As in the days of Juryman Bushel, the state remains uneasy about the discretion that juries enjoy.

Does the fact that jurors can find whatever they want mean that they should? Not necessarily. Chief Justice Vaughan upheld the right of an English jury to reject laws promulgated by a thoroughly undemocratic monarchical government. In contrast, the United States today is a democracy in which nearly every adult citizen has the right to vote. Today, jury nullification can be seen as a profoundly undemocratic act. After all, laws are passed by democratically elected bodies. However, it is also a right that jurors continue to enjoy. It may be a secret, but under the U.S. system of law, the jury is still sovereign.^a

^aDanielle S. Allen, *The World of Prometheus: The Politics of Punishing in Democratic Athens* (Princeton, NJ: Princeton University Press, 1999), 7.