



A Difference That Makes A Difference

Jury Power: What the Courts Don't Want You to Know

The origins of the modern jury go back to the early 1200s, when the English Crown enlisted the most notable men in local communities across England into administrative divisions called “hundreds.” Twice a year, the king’s circuit court judges would meet with these hundreds of notable individuals and ask them to identify people in each village who had violated the king’s peace. Fines and other forms of punishment were then administered accordingly.

By the 14th century, it had become clear that this approach was subject to abuse. As a result, it was decided that jury verdicts had to be unanimous. By the mid-16th century, justices of the peace had the power to investigate accusations, take statements from the accused and the accuser, and indict potential criminals. Justices of the peace still had to present their findings to a jury, but they increasingly attempted to direct juries’ verdicts by providing instructions on how they should proceed.

But sometimes juries refused to play along. This was particularly true when it came to enforcing laws about religion. In 1670, William Penn, a Quaker, was brought to trial for illegally preaching to the public. Under English law, only state-sanctioned Anglican priests could preach publicly. Penn admitted that he had broken the law, but

he argued that the law itself was illegal. He asked the jury to acquit him. It did, despite instructions from the presiding judge to enforce the law.

The Crown was profoundly displeased, because, in a sense, the jury’s challenge raised a very fundamental question: Who really held sovereign power? When a jury could set aside laws made by the queen in Parliament, the clear implication was that the jury, not the government, was the ultimate power in society. To demonstrate where power really lay, the Crown fined all 12 jury members.

Juryman Bushel, however, refused to pay. His appeal went to the court of Chief Justice Robert Vaughan, who ruled in favor of the stubborn juror. Vaughan’s opinion established something remarkable: Juries truly became the final authority in the English justice system. This had been rather vague until that moment, and so Vaughan’s ruling marked a turning point in judicial history. Today, the practice whereby juries set aside laws or penalties that they disagree with is known as jury nullification. In the United States, the right to a trial by jury is one of a citizen’s basic constitutional rights, enshrined in the Sixth Amendment of the U.S. Constitution.

Penn went on to establish the colony of Pennsylvania in North America. Like him, jury nullification also jumped across the Atlantic. In the tumultuous years leading up