



Supreme Court Justice Sotomayor Supports Practice of Jury Nullification

An article published by the Fully Informed Jury Association reports that on February 8, Supreme Court Justice Sonya Sotomayor (shown) told a group gathered at New York University that she disagreed with the Second Circuit Court's holding in *United States vs. Thomas*. In that ruling, the court refused to recognize the legitimacy of jury nullification, the right reserved by members of a jury to exercise the demands of their consciences in refusing to accept a judge's interpretation of a law.



"There is a place, I think, for jury nullification — finding the balance in that and the role judges should play," Sotomayor said, commenting on the Second Circuit's decision to excuse a juror based on a suspicion that he was practicing jury nullification by refusing to find a suspect guilty. In its ruling, the Second Circuit wrote, "We categorically reject the idea that, in a society committed to the rule of law, jury nullification is desirable or that courts may permit it to occur when it is within their authority to prevent."

To understand the value of jury nullification and its intended role in the justice system, it might help to read the opinion of many of the leading lights of the founding of the Republic, all of whom considered jury nullification to be a powerful weapon in the war against tyranny.

"I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution," Thomas Jefferson wrote.

In *The Federalist Papers*, Alexander Hamilton wrote that trial by jury was the "very palladium of free government" and a "valuable check upon corruption."

Hamilton's fellow *Federalist* author and Supreme Court Chief Justice John Jay informed a jury in a 1794 case:

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 to decide. But it must 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.

Given the strength of these opinions, then, it is no surprise that the denial of trials by jury was one of the foremost acts of despotism listed by Thomas Jefferson in the Declaration of Independence.

As for the concept that juries have not only the power but the obligation to nullify unjust rulings of a judge, John Adams wrote, "It is not only [the juror's] right, but his duty ... to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court."



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And Hamilton, again from *The Federalist Papers*, described the jury's check on the judge as a "double security" that "tends to preserve the purity" of both judge and jury.

The belief, then, that juries may act contrary to the will of a judge is nothing new in American law. In fact, it is an act of resistance to government oppression that our Founders believed to be fundamental in a Republic that was to remain free under the rule of law, rather than enslaved according to the rule of men.

As indicated by the statements provided above, our Founding Fathers zealously defended this right and recognized that only an informed and empowered jury could effectively protect a defendant from the potentially harmful effects of autocratic judges.

On its website, the Fully Informed Jury Association, an organization devoted to educating Americans on the benefits of jury nullification, sums up the reason jury nullification is a good idea and one supported by constitutional principles of freedom from tyranny:

The primary function of the independent juror is not, as many think, to dispense punishment to fellow citizens accused of breaking various laws, but rather to protect fellow citizens from tyrannical abuses of power by the government.

In spite of the Second Circuit Court's denial of this right — something that has become a habit of federal courts — the Constitution guarantees the right to trial by jury.

This means that the government must bring its case before a jury of the people if government wants to deprive any person of life, liberty, or property. In defense of those "unalienable rights," indeed, as the last line of defense, jurors can reject government tyranny by refusing to convict those subjected to prosecution for violating unjust laws.

One brief episode from the history of the early Republic will demonstrate the almost innate understanding the men of the Founding Generation had of their right to refuse to punish a man for violating an unjust law. Near the end of the War of 1812, a British military detachment deployed in Maryland seized four citizens of the town of Upper Marlboro, Maryland, and threatened to hang them the next day. In response, the townspeople raided the British encampment that night and apprehended six British soldiers, promising to hang them if their four fellow citizens were not returned immediately. The mayor and the British commander agreed to the exchange and the four citizens returned home and the six soldiers returned to their unit.

Soon, a parade was held in honor of the mayor's bravery and service to his city. After giving a speech thanking his fellow citizens for their commendation, the mayor stepped down from the dais and was immediately handcuffed and arrested by federal agents of the U.S. Department of Justice. The federal agents informed the mayor that he was being charged by the government of the United States with aiding and abetting the enemy by allowing the British soldiers to return to their encampment. At his trial before a federal judge (who, incidentally, was at the event celebrating the mayor's heroism) a federal prosecutor formally charged the mayor with treason. After the presentation of the evidence, the judge released the jury to adjourn to a nearby tavern and deliberate on the charges. Without a moment's delay, the jury foreman stood and informed the federal judge that he and his fellow jurors did not need to deliberate; they had found the defendant not guilty of treason.

In a speech given at the Ludwig von Mises Institute, Judge Andrew Napolitano described this event as the *first example* of jury nullification. While that can't be said for certain, the story illustrates the value given by our ancestors to the supremacy of the rule of law over the rule of men. Jury nullification is a



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powerful protector of that supremacy.



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