

Company, Hercules, Red Bug, and Nu-Klea Starlite, to name a few. Henry Ford and Thomas Edison teamed up on an electric car, but, although some prototypes were built, it never was commercially produced. Though they have faded from mass cultural memory, electric cars have never been completely out of production.

The reasons why electrics faded into obscurity while gas cars and trucks became 99.999 percent dominant are complex and are still being debated. If only they hadn't been sidelined and had continued to develop apace, the world would be a very different place.

22

JURIES ARE ALLOWED TO JUDGE THE LAW, NOT JUST THE FACTS



In order to guard citizens against the whims of the King, the right to a trial by jury was established by the Magna Carta in 1215, and it has become one of the most sacrosanct legal aspects of British and American societies. We tend to believe that the duty of a jury is solely to determine whether someone broke the law. In fact, it's not unusual for judges to instruct juries that they are to judge only the facts in a case, while the judge will sit in judgment of the law itself.

Nonsense.

Juries are the last line of defense against the power abuses of the authorities. They have the right to judge the law. Even if a defendant committed a crime, a jury can refuse to render a guilty verdict. Among the main reasons why this might happen, according to attorney Clay S. Conrad:

When the defendant has already suffered enough, when it would be unfair or against the public interest for the defendant to be convicted, when the jury disagrees with the law itself, when the prosecution or the arresting authorities have gone "too far" in the single-minded quest to arrest and convict a particular defendant, when the punishments to be imposed are excessive or when the jury suspects that the charges have been brought for political reasons or to make an unfair example of the hapless defendant...

Some of the earliest examples of jury nullification from Britain and the American Colonies were refusals to convict people who had spoken ill of the government (they were prosecuted under "seditious libel" laws) or who were practicing forbidden religions, such as Quakerism. Up to the time of the Civil War, American juries often refused to convict the brave souls who helped runaway slaves. In the 1800s, jury nullifications saved the hides of union organizers who were being prosecuted with conspiracy to restrain trade. Juries used their power to free people charged under the anti-alcohol laws of Prohibition, as well as antiwar protesters during the Vietnam era. Today, juries sometimes refuse to convict drug users (especially medical marijuana users), tax protesters, abortion protesters, gun owners, battered spouses, and people who commit "mercy killings."

Judges and prosecutors will often outright lie about the existence of this power, but centuries of court decisions and other evidence prove that jurors can vote their consciences.

When the US Constitution was created, with its Sixth Amendment guarantee of a jury trial, the most popular law dictionary of the time said that juries "may not only find things of their own knowledge, but they go according to their consciences." The first edition of Noah Webster's celebrated dictionary (1828) said that juries "decide both the law and the fact in criminal prosecutions."

Jury nullification is specifically enshrined in the constitutions of Pennsylvania, Indiana, and Maryland. The state codes of Connecticut and Illinois contain similar provisions. The second US President, 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." Similarly, Founding Father Alexander Hamilton declared: "It is essential to the security of personal rights and public liberty, that the jury should have and exercise the power to judge both of the law and of the criminal intent."

Legendary Supreme Court Chief Justice John Jay once instructed a jury:

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the providence of the jury, on questions of law, it is the providence 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 the right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.

The following year, 1795, Justice James Irdell declared: "[T]hough the jury will generally respect the sentiment of the court on points of law, they are not bound to deliver a verdict conformably to them." In 1817, Chief Justice John Marshall said that "the jury in a capital case were judges, as well of the law as the fact, and were bound to acquit where either was doubtful."

In more recent times, the Fourth Circuit Court of Appeals unanimously held in 1969:

If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic and passion, the jury has the power to acquit, and the courts must abide that decision.

Three years later, the DC Circuit Court of Appeals noted: "The pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge."

In a 1993 law journal article, federal Judge Jack B. Weinstein wrote: "When juries refuse to convict on the basis of what they think are unjust laws, they are performing their duties as jurors."

Those who try to wish away the power of jury nullification often point to cases in which racist juries have refused to convict white people charged with racial violence. As attorney Conrad shows in his book, *Jury Nullification: The Evolution of a Doctrine*, this has occurred only in very rare instances. Besides, it's ridiculous to try to stamp out or deny a certain power just because it

can be used for bad ends as well as good. What form of power hasn't been misused at least once in a while?

The Fully Informed Jury Association (FIJA) is the best-known organization seeking to tell all citizens about their powers as jurors. People have been arrested for simply handing out FIJA literature in front of courthouses. During jury selections, FIJA members have been excluded solely on the grounds that they belong to the group.

FIJA also seeks laws that would require judges to tell jurors that they can and should judge the law, but this has been an uphill battle, to say the least. In a still-standing decision (*Sparf and Hansen v. US*, 1895), the Supreme Court ruled that judges don't have to let jurors know their full powers. In cases where the defense has brought up jury nullification during the proceedings, judges have sometimes held the defense attorney in contempt. Still, 21 state legislatures have introduced informed-jury legislation, with three of them passing it through one chamber (ie, House or Senate).

Quite obviously, the justice system is terrified of this power, which is all the more reason for us to mow about it.

23

THE POLICE AREN'T LEGALLY OBLIGATED TO PROTECT YOU

Without even thinking about it, we take it as a given that the police must protect each of us. That's their whole reason for existence, right?

While this might be true in a few jurisdictions in the US and Canada, it is actually the exception, not the rule. In general, court decisions and state laws have held that cops don't have to do a thing to help you when you're in danger.

In the only book devoted exclusively to the subject, *Dial 911 and Die*, attorney Richard W. Stevens writes:

It was the most shocking thing I learned in law school. I was studying Torts in my first year at the University of San Diego School of Law, when I came upon the case of *Hartzler v. City of San Jose*. In that case I discovered the secret truth: *the government owes no duty to protect individual citizens from criminal attack*. Not only did the California courts hold to that rule, the California legislature had enacted a statute to make sure the courts couldn't change the rule.

But this doesn't apply to just the wild, upside down world of Kalifornia. Stevens cites laws an cases for every state — plus Washington DC, Puerto Rico, the Virgin Islands, and Canada - which reveal the same thing. If the police fail to protect you, even through sheer incompetence and negligence, don't expect that you or your next of kin will be able to sue.

Even in the nation's heartland, in bucolic Iowa, you can't depend on 911. In 1987, two men broke into a family's home, tied up the parents, slit the mother's throat, raped the 16-year-old daughter,

and drove off with the 12-year old daughter (whom they later murdered). The emergency dispatcher couldn't be bothered with immediately sending police to chase the kidnapers/murders/rapists while the abducted little girl was still alive. First he had to take calls about a parking violation downtown and a complaint about harassing phone calls. When he got around to the kidnapping, he didn't issue an all-points bulletin but instead told just one officer to come back to the police station, not even mentioning that it was an emergency. Even more blazing negligence ensued, but suffice it to say that when the remnants of the family sued the city and the police, their case was summarily dismissed before going to trial. The state appeals court upheld the decision, claiming that the authorities have no duty to protect individuals.

Similarly, people in various states have been unable to successfully sue over the following situations:

✕ when 911 systems have been shut down for maintenance

✕ when a known stalker kills someone

✕ when the police pull over but don't arrest a drunk driver who runs over someone later that night

✕ when a cop known to be violently unstable shoots a driver he pulled over for an inadequate muffler

✕ when authorities know in advance of a plan to commit murder but do nothing to stop it

✕ when parole boards free violent psychotics, including child rapist-murderers

✕ when felons escape from prison and kill someone

✕ when houses burn down because the fire department didn't respond promptly

✕ when children are beaten to death in foster homes

A minority of states do offer a tiny bit of hope. In eighteen states, citizens have successfully sued over failure to protect, but even here the grounds have been very narrow. Usually, the police and the victim must have had a prior "special relationship" (for example, the authorities must have promised protection to this specific individual in the past). And, not surprisingly, many of these states have issued contradictory court rulings, or a conflict exists between state law and the rulings of the courts.

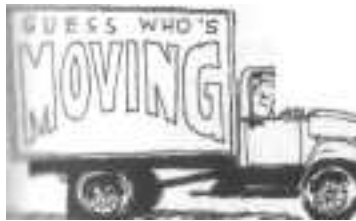
Don't look to Constitution for help. "In its landmark decision of *DeShaney v. Winnebago County Department of Social Services*," Stevens writes, "the US Supreme Court declared that the Constitution does not impose a duty on the state and local governments to protect the citizens from criminal harm."

All in all, as Stevens says, you'd be much better off owning a gun and learning how to use it. Even in those cases where you could successfully sue, this victory comes only after years (sometimes more than a decade) of wrestling with the justice system and only after you've been gravely injured or your loved one has been snuffed.

24

THE GOVERNMENT CAN TAKE YOUR HOUSE AND LAND, THEN SELL THEM TO PRIVATE CORPORATIONS

It's not an issue that gets much attention, but the government has the right to seize your house, business, and/or land, forcing you into the street. This mighty power, called "eminent domain," is enshrined in the US Constitution's Fifth Amendment: "...nor shall private property be taken for public use without just compensation." Every single state constitution also stipulates that a person whose property is taken must be justly compensated and that the property must be put to public use. This should mean that if your house is smack-dab in the middle of a proposed highway, the government can take it, pay you market value, and build the highway.



Whether or not this is a power the government should have is very much open to question, but what makes it worse is the abuse of this supposedly limited power. Across the country, local governments are stealing their citizens' property, then turning around and selling it to corporations for the construction of malls, condominiums, parking lots, racetracks, office complexes, factories, etc.

The Institute for Justice — the country's only nonprofit, public-interest law firm with a libertarian philosophy — spends a good deal of time protecting individuals and small businesses from greedy corporations and their partners in crime: bureaucrats armed with eminent domain. In 2003, it released a report on the use of "governmental condemnation" (another name for eminent domain) for private gain. No central data collection for this trend exists, and only one state (Connecticut) keeps statistics on it. Using court records, media accounts, and information from involved parties, the Institute I found over *10,000* such abuses in 41 states from 1998 through 2002. Of these, the legal I process had been initiated against 3,722 properties, and condemnation had been threatened against 6,560 properties. (Remember, this is condemnation solely for the benefit of private parties, not for so-called legitimate reasons of "public use.")

In one instance, the city of Hurst, Texas, condemned 127 homes so that a mall could expand. Most of the families moved under the pressure, but ten chose to stay and fight. The Institute writes:

A Texas trial judge refused to stay the condemnations while the suit was on-going, so the residents lost their homes. Leonard Prohs had to move while his wife was in the hospital with brain cancer. She died only five days after their house was demolished. Phyllis Duval's husband also was in the hospital with cancer at the time they were required to move. He died one month after the demolition. Of the ten couples, three spouses died and four others suffered heart attacks during the dispute and litigation. In court, the owners presented

evidence that the land surveyor who designed the roads for the mall had been told to change the path of one road to run through eight of the houses of the owners challenging the condemnations.

In another case, wanting to "redevelop" Main Street, the city of East Hartford, Connecticut, used eminent domain to threaten a bakery/deli that had been in that spot for 93 years, owned and operated by the same family during that whole time. Thus coerced, the family sold the business for \$1.75 million, and the local landmark was destroyed. But the redevelopment fell through, so the lot now stands empty and the city is in debt.

The city of Cypress, California, wanted Costco to build a retail store on an 18-acre plot of land. Trouble was, the Cottonwood Christian Center already owned the land fair and square, and was planning to build a church on it. The city council used eminent domain to seize the land, saying that the new church would be a "public nuisance" and would "blight" the area (which is right beside a horse-racing track). The Christian Center got a federal injunction to stop the condemnation, and the city appealed this decision. To avoid further protracted legal nightmares, the church group consented to trade its land for another tract in the vicinity.

But all of this is small potatoes compared to what's going on in Riviera Beach, Florida:

City Council members voted unanimously to approve a \$1.25 billion redevelopment plan with the authority to use eminent domain to condemn at least 1,700 houses and apartments and dislocate 5,100 people. The city will then take the property and sell the land to commercial yachting, shipping, and tourism companies.

If approved by the state, it will be one of the biggest eminent domain seizures in US history.

In 1795, the Supreme Court referred to eminent domain as "the despotic power." Over two centuries later, they continue to be proven right.

25

THE SUPREME COURT HAS RULED THAT YOU'RE ALLOWED TO INGEST ANY DRUG, ESPECIALLY IF YOU'RE AN ADDICT

In the early 1920s, Dr. Linder was convicted of selling one morphine tablet and three cocaine tablets to a patient who was addicted to narcotics. The Supreme Court overturned the conviction, declaring that providing an addicted patient with a fairly small amount of drugs is an acceptable medical practice "when designed temporarily to alleviate an addict's pains." (*Linder v. United States.*)

In 1962, the Court heard the case of a man who had been sent to the clink under a California state law that made being an addict a criminal offense. Once again, the verdict was tossed out, with the Supremes saying that punishing an addict for being an addict is cruel and unusual and, thus, unconstitutional. (*Robinson v. California.*)

Six years later, the Supreme Court reaffirmed these principles in *Powell v. Texas*. A man who was arrested for being drunk in public said that, because he was an alcoholic, he couldn't help it. He invoked the *Robinson* decision as precedent. The Court upheld his conviction because it had been based on an action (being wasted in public), not on the general condition of his addiction to booze. Justice White supported this decision, yet for different reasons than the others. In his concurring opinion, he expanded *Robinson*:

If it cannot be a crime to have an irresistible compulsion to use narcotics,... I do not see how it can constitutionally be a crime to yield to such a compulsion. Punishing an addict for using drugs convicts for addiction under a different name. Distinguishing between the two crimes is like forbidding criminal conviction for being sick with flu or epilepsy, but permitting punishment for running a fever or having a convulsion. Unless *Robinson* is to be abandoned, the use of narcotics by an addict must be beyond the reach of the criminal law. Similarly, the chronic alcoholic with an irresistible urge to consume alcohol should not be punishable for drinking or for being drunk.

Commenting on these cases, Superior Court Judge James R Gray, an outspoken critic of drug prohibition, has recently written:

What difference is there between alcohol and any other dangerous and sometimes addictive drug? The primary difference is that one is legal while the others are not. And the US Supreme Court has said as much on at least two occasions, finding both in 1925 and 1962 that to punish a person for the disease of drug addiction violated the Constitution's prohibition on cruel and unusual punishment. If that is true, why do we continue to prosecute addicted people for taking these drugs, when it would be unconstitutional to prosecute them for their addiction?

Judge Gray gets right to the heart of the matter: "In effect, this 'forgotten precedent' says that >ni! can only be constitutionally punishable for one's *conduct*, such as assaults, burglary, and driving under the influence, and not simply for what one puts into one's own body."

If only the Supreme Court and the rest of the justice/law-enforcement complex would apply these decisions, we'd be living in a saner society.

26

THE AGE OF CONSENT IN MOST OF THE US IS NOT EIGHTEEN

The accepted wisdom tells us that the age at which a person can legally consent to sex in the US is eighteen. Before this line of demarcation, a person is "jailbait" or "chicken." On their eighteenth birthday, they become "legal." But in the majority of states, this isn't the case.

It's up to each state to determine its own age of consent. Only fifteen states have put theirs at eighteen, with the rest going lower. Eight have set the magic point at the seventeenth birthday. The most popular age is sixteen, with 27 states and Washington DC setting the ability to sexually consent there. (Hawaii's age of consent had been fourteen until mid-2001, when it was bumped to sixteen.)