

# Constitution In 10 Lessons

## Lesson 8

### Jury Nullification

What Criminal Laws are Congress  
Authorized To Make?

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# Jury Nullification

As always, we begin our study with definitions from the dictionary of the period - Webster's 1828 Dictionary.

Why do we use Webster's 1828 Dictionary when referencing the words used by our Founding Fathers?

# The Practice of Original Intent

We use the 1828 version of Webster's because words change their meaning over time. To accurately understand what our Founders wrote, we must understand their lexicon - or word list - as understood by these men when they wrote these documents and articles.

## Jury n. [L. juro, to swear.]

A number of freeholders, selected in the manner prescribed by law, empaneled and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case. **Grand juries** consist usually of twenty four freeholders at least, and are summoned to try matters alleged in indictments. **Petty juries**, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions. The decision of a petty jury is called a verdict.

# Article III, Sec. 2, Clause 1

Provides the Judicial Branch with the authority to hear court cases.

- A criminal case would most likely involve an alleged violation of the U.S. (federal) Criminal Code.
- A civil case would most likely involve a case between citizens residing in different States over some non-criminal issue as breach of contract, negligence, etc.

# Jury Nullification

- Arises in criminal cases where Defendant is charged with an unjust, unfair, or unconstitutional federal law - e.g. the crime of failing to buy health insurance. Or, e.g. failure to wear the identifying armband for being a Jew or a Christian.

# Even if the Prosecutor

Proves beyond a reasonable doubt that  
Defendant failed to buy health  
insurance, do you, as a Juror, have the  
Right -- or the Duty -- to refuse to  
convict?

# The Prosecutor and the Judge

- Insist that you **do not** have that Right.
- If you find - as a matter of FACT - that Defendant failed to buy health insurance, then you must find him guilty.





# The Defense Counsel

- Wants to tell you of your Duty of Jury Nullification.
- But can't do so because of instructions of the Judge

# What does the Constitution say?

“The Trial of all Crimes,  
Except in Cases of Impeachment,  
Shall be by Jury.”

Article III, Section 2, last clause.

# What is the definition of Jury?

“...Petty juries, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions. The decision of a petty jury is called a verdict.”

Webster's 1828 Dictionary

# Words Mean Things

Our framers  
clearly understood  
the meaning of the word  
***jury***  
to include  
both the ***right*** and the ***duty***  
to judge the law  
as well as the facts  
of the case.

## Federalist 83 - Hamilton

“But I must acknowledge that I cannot readily discern the inseparable connection between the existence of liberty, and the trial by jury in civil cases.

Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions, have ever appeared to me to be the great engines of judicial despotism; and these have all relation to criminal proceedings. “

# Lawyers exist upon words and their definitions.

- Alexander Hamilton, like so many others who participated in the Constitutional Convention was a lawyer.
- The work of lawyers IS the consummate use of words and their proper definitions.
- As exhibited in Federalist 83, Hamilton is well aware of the problem of unjust criminal statutes.



# **Duty of the Juror**

**Follow**

**Proper**

**Procedure.**

# Judges Orders

- The Judge will probably ask the jurors to take an Oath that you will follow the Law as he explains it to you and
- that if you find that Defendant violated the Statute, then you **MUST** find him guilty.





# **If you talk of nullification...**

Or judging The Law, or asking whether the Statute under which Defendant is charged is constitutional,

then the Prosecutor  
will not select you  
for jury duty.

# Voir Dire

- Both counsel have the right to ask you questions during “voir dire” to determine whether you will be a good Juror for their side.
- You are under Oath to Tell the Truth when you are being questioned.
- If you are asked by the Prosecutor about Jury Nullification - do you know about it? - do you agree with it - **TELL THE TRUTH!**



# You have the right

- To assume that the Judge is fair and impartial and will obey the Constitution because of his Oath - Article IV, Clauses 2 & 3.
- When you take the Juror's Oath, you have the right to assume that the judge will obey the Constitution.

## **But, once you are seated,...**

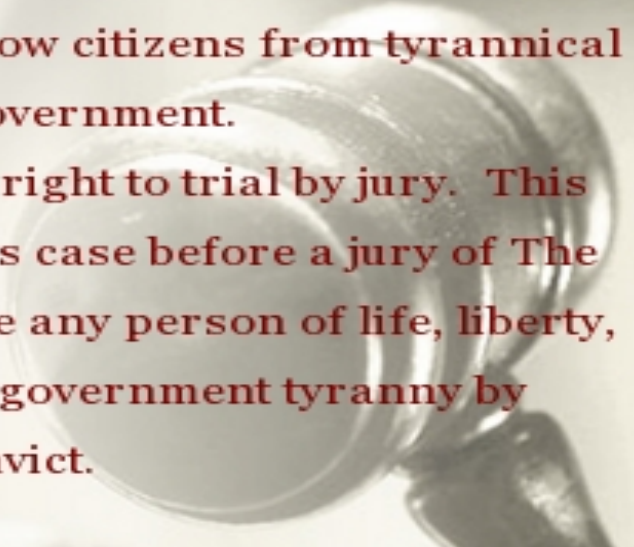
- And find out what the Defendant is charged with, and hear the evidence, and then go into the Jury Room to deliberate;

then you must do  
as your  
conscience dictates.

## More Information: Fully Informed Jury Association - **fija.org**

*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 government.

The Constitution guarantees you the right to trial by jury. This means that government must bring its case before a jury of The People if government wants to deprive any person of life, liberty, or property. Jurors can say no to government tyranny by refusing to convict.



# Fully Informed Jury Association

## FIJA Works To:

Inform potential jurors of their traditional, legal authority to refuse to enforce corrupt laws;

Inform potential jurors that they cannot be required to check their conscience at the courthouse door;

Inform potential jurors that they cannot be punished for their verdict;

Inform everyone that juror veto—juror nullification—is a peaceful way to protect human rights against corrupt politicians and government tyranny.

That is FIJA's message.

# Additional Material

Jurors' Handbook:

A Citizens Guide to Jury Duty

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[fija.org/docs/JG\\_Jurors\\_Handbook.pdf](http://fija.org/docs/JG_Jurors_Handbook.pdf)

Disclaimer from PH: There is some information at FIJA.org site, that PH has concerns about, but the Jurors' Handbook is "Right On!"



# **What Criminal Laws are Congress Authorized To Make?**

The Constitution  
Grants to Congress  
Only

**Limited Powers to Make Criminal Laws**





# Congressional power is defined by 5 categories.

1. Those made pursuant to express authorizations for **four** specific crimes.
2. Those made under the “necessary and proper” clause.
3. Those made for the few tiny geographical areas over which Congress has “exclusive legislation”.
4. Those governing the military.
5. Those made pursuant to two of the Amendments to the Constitution.

# 1. Those made pursuant to express authorizations for *four* specific crimes.

Article 1, Section 8, grants Congress the authority to define and punish:

- **Counterfeiting,**
- **Piracies** and Felonies committed on the High Seas,
- Offenses against the “**Laws of Nations**”,
- **Treason.**

## 2. Those made under the “**necessary and proper**” clause.

Article 1, Section 8, last clause, grants to Congress the power “to make all Laws which shall be **necessary and proper** for carrying into Execution...all...Powers vested by this Constitution in the Government of the United States...”.

## 2. Those made under the “**necessary and proper**” clause.

This “**necessary and proper**” clause allows Congress to make criminal laws when necessary to enforce powers vested by the Constitution in the Federal Government.

This phrase worried the people so...

## Federalist 44 - Madison explains...

“If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution, and exercise powers not warranted by its true meaning, I answer, the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same, in short, as if the State legislatures should violate the irrespective constitutional authorities....”

## **Federalist 44 - Madison explains...**

“In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers.”

## Federalist 33 - Hamilton

“If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify.”



## 2. Those made under the “necessary and proper” clause.

In Federalist 33, Hamilton cited Article VI, clause 2, as showing that laws which are *not pursuant* to the Constitution are merely acts of usurpation and deserve to be treated as such.

- This is why every citizen must be educated regarding the power the people possess under our Constitution.



## 2. Those made under the “necessary and proper” clause.

Congress has authority under this clause to make criminal laws:

- Enforcing Taxes, Duties, Imposts & Excises, (Article 1, Sec. 8, clause 1)
- Prohibiting the filing of false statements or claims in Bankruptcy Court, (Art. 1, Sec. 8, Cl 4)
- Forbidding the importation of slaves after 1808 (Article 1, Sec. 9, Cl. 1)

## **2. Those made under the “necessary and proper” clause.**

Congress has authority under this clause to make criminal laws:

- Prohibiting the accepting of bribes by civil officers of the United States. (Article II, Sec. 3 (Impeachment))

## 2. Those made under the “necessary and proper” clause.

The main duty of the federal judiciary created by Article III is to conduct trials [in the limited category of cases which they are permitted to hear], and that means parties & witnesses. Parties and witnesses must be required to tell the Truth.

- So, it would be ***necessary and proper*** for Congress to make laws declaring perjury and lying under oath in federal court criminal offenses.

### **3. Those made for the few tiny geographical areas over which Congress has “exclusive legislation”.**

Article 1, Sec. 8, next to last clause, authorizes Congress to exercise “exclusive legislation in all Cases whatsoever” over small defined geographical areas; the seat of the government of the U.S. [not to exceed 10 sq. miles], forts, dock-yards, magazines, arsenals, and the like.

Madison wrote in Federalist 43 (4th-6th paragraphs), it is necessary for the government of the U.S. to have “complete authority” at the seat of government, and over forts, dock-yards, etc. This mean that over these limited geographical areas, Congress has authority to make the full range of laws criminalizing murder, robbery, extortion, arson, rape, kidnapping, etc.

**Note: It is important to note that private citizens would not be affected by these laws unless they are inside the District of Columbia, military bases, dock-yards, and the like.**

## 4. Those governing the military.

- Under this grant of authority, Congress has properly enacted The Uniform Code of Military Justice, the criminal code which governs members of our military forces. This covers all the “standard” criminal offenses plus additional crimes uniquely appropriate to those in the military: failure to obey a lawful order, dereliction of duty, absent without leave, desertion, conduct unbecoming an officer, etc. [Article 1, Sec. 8, cl. 14].
- **Note: Civilians are not affected by the Uniform Code of Military Justice.**

## **5. Those made pursuant to two of the Amendments to the Constitution.**

- 13th Amendment authorizes Congress to make laws criminally punishing those who keep slaves.
- 16th Amendment presumably authorizes Congress to make criminal laws to enforce the “income tax”.
- The 14th, 15th, 19th, 24th, and 26th Amendments restrict only States &/or the federal government.



## **5. Those made pursuant to two of the Amendments to the Constitution.**

- All other Amendments apart from the Bill of Rights (Amendments 1-10) address “housekeeping” issues.
- Note: Congress’ criminal jurisdiction over private citizens under all Amendments is limited to those who keep slaves or don’t pay “income” taxes (whatever “income” meant when the Amendment was adopted).
- Estate and gift taxes are not authorized by the Constitution.





## **Conclusion: Congress has no general authority to pass criminal laws.**

- Thus, laws which purport to be of general application throughout the several States criminalizing acts respecting firearms, ammunition, hate crimes, environmental crimes, economic crimes, banking crimes, computer crimes, murder, kidnapping, narcotics, arson, extortion, etc., etc., etc., are all unconstitutional usurpations.





# Remember...

Before the 18th Amendment was ratified in 1919, *everybody* knew that Congress didn't have the power to make laws criminalizing the manufacture or distribution of intoxicating beverages! Congress needed an Amendment to the Constitution to authorize them to make the laws giving effect to prohibition!



**But today, Congress is lawless and filled with  
usurpers...**

**And the  
Federal Prisons are filled  
With inmates convicted under  
Unconstitutional Laws.**

# Is there a remedy?

“In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers.”

Federalist 44 - Madison



## **Thus, when Congress makes a criminal law for which it lacks authority...**

- It is first the duty and the power of the Executive Branch [in the person of the U.S. Attorney General] to refuse to prosecute the violation.
- If that check fails, the Judicial Branch has the power to declare the statute unconstitutional.
- If the U.S. Attorneys and Federal Judges both fail in their obligations to enforce the Constitution, that responsibility falls to the people.

# We the people...

Must, as Madison instructed, work for the election of more “*faithful representatives*” and “*annul the acts of the usurpers.*”

More members of our community must know just how much authority *We the People* possess to rid ourselves of these usurpers.

# Federalist 33 - Hamilton

If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it [the federal government] is, must appeal to the standard [The Constitution] they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify.

# How do we do this?

- Nullification at the State Level,
- Demand impeachment,
- Recall petitions,
- Organized rallies to petition our grievances
- Become a people as Hamilton described,  
“enlightened enough to distinguish between a  
legal exercise and an illegal usurpation of  
authority.” Federalist 16
- Learn and teach others the Constitution,  
Declaration, and Federalist Papers.

# The Final Point Is...

- *We The People* have far more authority than we have been educated to know about.
- To live in Liberty is a daily and constant responsibility of the individual.
- We must be knowledgeable regarding the Truth in order to practice it in our daily life.
- The study of our Constitution, Declaration, and Federalist Papers is necessary and proper.