

This is my RFD for the debate between bsh1 and shas04, on the resolution: "In the United States criminal justice system, jury nullification ought to be used in the face of perceived injustice." The debate may be found here: <https://www.debateart.com/debates/88>.

== Who had better conduct? ==

Both debaters maintained good conduct in this debate. Neither side resorted to personal attacks or insults, there were no significant rule violations, no forfeits, and the debate was a civil exchange of ideas. As such, conduct is tied.

== Who had better spelling and grammar? ==

There weren't many grammatical or spelling errors made by either side to the point where they actively impaired readability. Both debaters had clearly structured speeches with paragraphs and headers. Thus, spelling and grammar remains tied. However, I'd advise Con to use shorter paragraphs in general and perhaps make use of Rich text capabilities/functions, to make their cases clearer and better formatted. None of this was significant enough to sway the S&G points to either side.

== Who had more convincing arguments? ==

(1) The problem

Pro starts off the debate by characterizing a problem of (a) unjust laws and (b) the unjust misapplication of laws. Con drops all of Pro's examples and concedes that most of these instances are instances of laws actually being unjust. However, Con suggests three things in response: (a) that there are very few unjust and "unconstitutional" laws in existence, and to the extent that they exist, US society is already doing away with them, (b) lobbying for better laws functions as a more effective alternative to jury nullification, and (c) juries can just manufacture doubt in order to return verdicts of "not guilty" in cases that they believe to be unjust.

Pro deals with (a) quite effectively. He demonstrates that Con's assertion here has no evidence, when compared to the evidence that Pro presents starting R1. I also buy that (1) this isn't just about "unconstitutional" laws but unjust laws, (2) the unjust misapplication of laws is a massive factor that Con just doesn't account for, and (3) even if unjust laws are few in number, there needs to be a short term method of dealing with them. Con drops these responses in R4, meaning I buy that unjust laws exist by default. In addition, Con drops Pro's important warrant that legislators cannot foresee *every* circumstance in which a law is applied, meaning there's always going to be a problem of laws being unjustly applied in *some* circumstances.

(2) Con's alternative solutions to the problem (i.e. (b) and (c))

The alternative of lobbying and petitioning ends up becoming a massive issue in the debate. Pro

raises multiple attacks to “lobbying” and “petitioning.”

The first attack Pro raises is that it's not mutually exclusive. Con gets some offense here by suggesting that the quality of petitions is undermined by the existence of jury nullification, because it perpetuates the notion that *any* law could just be unjust if people think it's unjust. This seems like an absurd response to me, *prima facie*, given that that's the whole *point* of petitions: to point to laws that people *think* are unjust. Fewer petitions doesn't seem like a good thing. It seems to me that good petitions would still get attention (the idea that attention would reduce has no warrant, which means I can reject it immediately) and that more concerns would be heard. Note that I'm not intervening here: I'm just rejecting a bare assertion from Con, which any *tabula rasa* judge is entitled to do – debaters are obliged to explain (i.e. warrant) their arguments for a *tabula rasa* judge to buy them. Nonetheless, Pro deals with this by (1) mitigating this and demonstrating that the marginal decline in popularity in petitions is, at best, really small, as evidenced by the popularity of petitions right now and (2) explaining why the logic doesn't really make sense. Con never comes back on this with a *convincing* response.

The second attack that Pro puts forward is that jury nullification has unique benefits. One, Pro argues that it has the benefit of *time*, because lobbying and petitioning take a long time. Con's response to this is the existence of a political capital incentive, but that still doesn't explain why legislation will be passed quickly. Pro also has empirical evidence that *factually proves* that petitions take more time (i.e. sources [7] and [8]). Con drops this evidence. Two, Pro proves that people breaking an unjust law will remain felons. Con's only response to this is that innocents will be acquitted, which isn't the *point* of Pro's attack. Three, Pro raises an important turn to Con's argument on minorities, suggesting that, in the US, racial minorities (e.g. African-Americans) aren't represented in legislatures at all, both physically and because the Democrats think African-Americans will always vote for them, making them non-swing voters who they don't really have to appease. Con's response that there's very little chance that African-American people get into a jury is a good response, but it's *clearly* outweighed by the level of systemic underrepresentation of theirs in politics. Pro points this out and mitigates Con's response by saying there are legal protections against racial discrimination in jury selection and that even *one* African-American in a jury is more influential in combating racism than the legislative process. Four, Pro raises multiple systemic problems with petitioning – that they reflect the views of signatories, rather than society as a whole (which is a point that's easily turned, since Pro never proves that *juries* reflect the views of society as a whole either, but Con never makes this turn and I assume Pro's response would be that a *random* selection of people is better than a specific homogenous group of people with a particular viewpoint); and that they don't always tackle serious or real issues (that doesn't make specific petitions that *do* tackle these issues bad – I don't see much explanation at the heart of this point). Con points out that a lot of Pro's criticisms are non-unique, since Pro also supports petitioning, which is true, but doesn't tackle the idea that jury nullification is *unique* in the benefits that it offers. On the whole, these two attacks compel me in the direction of buying that Con's alternatives are grossly insufficient.

The final alternative Con offers (or at least, seems to offer, to both bsh1 and me), as point (c), is the idea that juries can just manufacture doubt. There's many reasons this isn't a compelling alternative. First, even though it technically isn't jury nullification, it fits the definition of jury nullification set out by Pro in the definitions: "the act of a jury returning a verdict of 'not guilty' despite believing that the defendant is guilty of the crime charged." This debate isn't a policy debate about whether governments should allow jury nullification, but rather, about whether jurors should engage in this practice. I can discount this alternative right here. Second, Con never explains why jurors are *likely* to do this. The option of nullification being on the table means jurors are willing to nullify, whereas it doesn't seem to me that jurors are willing to lie and break the law in order to preserve "justice." Third, Pro tears this alternative down. He shows that it's unjust to force jurors to lie to uphold justice and that this is a violation of the ethical principle of "reasonable doubt." Con clarifies later that this isn't even the alternative they support – they just support acquitting *innocents.* Clearly, that's not an alternative that solves *any* of the problems Pro identifies at the start of the round.

Note: An overview Pro adds is that unjust laws are often supported by the majority. I don't buy that juries would be better with these laws – in fact, I think this could've easily been responded to with Con simply saying juries are twelve random people, meaning there's a good chance they're representative of majority viewpoints as well. Con doesn't make that response. Nonetheless, I don't credit this point because it lacks an explanation for why juries are comparatively better than petitions in this instance.

(3) Effectiveness of jury nullification

Con's central rebuttal to Pro's case at the start is hitting the solvency of jury nullification. I agree that this was, in fact, a big gap in Pro's case to start out with. However, Pro recovers from this gap in later rounds with responses. Con's R4 pretty much drops most of Pro's responses here.

There's a few reasons why I buy that Pro gets *some* amount of solvency to unjust laws through the mechanism of jury nullification. (a) Con themselves *concedes* that ordinary people have "moral sophistication" and just not "legal sophistication." Pro points out that Con doesn't offer an explanation for why legal sophistication, rather than moral understanding, is necessary to be in a position to engage in nullification. (b) Con supports a jury system, which means Con recognizes that a jury is effective, at least to the same extent that a judge is. However, Pro points out that juries have the unique benefit of being a check against government overreach, and that *someone* needs to have the ability to nullify, at least. Con responds to none of this. (c) I buy that some of these cases are so manifestly unjust – and Con concedes this – that juries are sensible enough to nullify these laws. Con doesn't do much for me in explaining *why* juries aren't sensible, meaning I default to Pro's explanation on effectiveness. I think Pro also does a good job of showing that jury nullification expands the degree to which civilian oversight is exercised on governments in the criminal justice system. Con drops that point.

(4) Off-case issues

Con's positive argumentation starts by trying to argue that juries will nullify in cases involving just laws as well. This starts by contesting Pro's characterization of what a just law is, arguing that victims deserve "retribution." Con then backpedals from this the moment Pro provides numerous reasons why retribution should not be a pillar of justice at all, dropping all of Pro's warrants and saying something abstract about the "three pillars of justice." It seems to me that Pro clearly showed that retribution shouldn't be one of those three pillars. Pro also shows that these victims often (a) don't exist at all, because these are often victimless crimes, and (b) these are *unjust laws,* meaning these aren't real victims who *deserve* retribution even if retribution were such a pillar. Con tries to push extreme cases like a murderer being let go because of personal disagreement with the death penalty, but Pro proves from empirical evidence that jury nullification is really rare and Con never shows that a jury is likely to unanimously let a murderer go because of a disagreement with sentencing. Pro also points out that a jury could simply nullify the death penalty rather than let this person walk free. It seems more likely that the majority of these cases are cases which both sides agree are unjust laws. Con's next objection, though, is that criminals need to "know that what they're doing is wrong" in cases where these are just laws that are being applied unjustly, i.e. a person who steals \$120 shouldn't walk free. Pro argues that disproportionate punishment, e.g. life imprisonment for a person who steals \$120, is a worse affront to justice – Con just dismisses it as "obvious" that that's not a situation that is likely to occur, though Pro points to an *actual situation* that occurred. Neither side really explains what the just punishment for stealing \$120 is, and Con seems to think it's worse that this person walks free, but since I buy that retribution shouldn't matter in punishment, the only warrant Con has left is rehabilitation/preventing recidivism. Pro takes recidivism/rehabilitation down. One, he shows that nullification is rare, so the marginal impact in terms of recidivism is small – especially since the deterrent continues to exist when many of these criminals are still punished. Two, he shows that overly harsh punishments lead to *more recidivism* through empirical data – that having a criminal record and committing a nonviolent crime leads to more crime. Con drops the empirical data at the heart of this important link turn. Con's argument from a convict's perspective, on stigmatization that convicts face, is clearly turned by Pro with evidence that convicts have it worse than non-convicts when both commit crimes. Con drops this empirical analysis. I'm also not clear, from Con's point, how people *know* that a convict committed a crime or that a jury nullified in that case, since it's wiped clean from the record, but Pro doesn't point this out, so I don't credit it.

Con has three pieces of positive argumentation left. First, they argue that drug use increases. Pro tears this down with empirical data. He proves that more strictly enforced drug laws lead to more crime, so jury nullification in drug cases is good. Pro also shows that strict enforcement of drug laws doesn't *necessarily* lead to reduced drug use – Con's mitigation on the marijuana example doesn't fulfill *Con's* burden of proof in showing that drug use increases, since it's Con's offense. Second, they argue that minorities are hurt by the existence of juries. However, Con never applies this argument to jury nullification, leaving a generic argument against juries. Con also doesn't prove that courts or the other alternatives are better. Pro shows that African-Americans are less represented in the political system and that juries might be their way

out, something Con drops. At best, this point is a wash. Con has some mitigation on how jury nullification hasn't solved every problem re: racism in the world, which is a purely defensive argument and doesn't add any offense to the table. Third, Con's philosophical argument on how the law should always be constant. This argument fails simply because it doesn't engage with Pro's preemptive response that a literal interpretation of the law misses the *heart* of the law – that laws without reasons are meaningless and unjust, and, thus, the *justification* for the law (the principle behind it) should be upheld rather than the law being upheld blindly in every instance irrespective of intended outcomes.

(5) Impact calculus

The offense Con has left on the table are a few petty thieves keep stealing. The rest of Con's offense has been completely mitigated to having a null effect or turned against them. Pro has more impactful offense on the table: people who stole \$120 aren't sent to prison for life, crime doesn't keep systematically increasing (the recidivism turn) to the same degree, and there is a civilian check on government oppression. Pro's offense outweighs Con's remaining offense. Thus, I vote Pro on arguments.

== Who had more reliable sources? ==

Con *really* struggled in this debate due to the lack of empirical evidence. It's really hard for me to buy Con's rhetoric or analytical explanations without evidence. Con makes numerous bare assertions – the entire minorities point, the entire argument on drugs, the entire argument on recidivism – in the face of Pro's evidence. There were many places where this struggle was evident. Pro's recidivism turn had evidence about rates of recidivism after punishment. Con dropped this evidence and relied on purely analytical explanations. The problem with that is (1) it failed to *adapt* to the new evidence Pro placed on the table and (2) I can't buy a purely theoretical explanation in the face of that explanation being contradicted *in the real world.* Similarly, Con's point on the number of unconstitutional laws that exist is proven empirically false. Other examples: Con's point on petitions as an alternative being mutually exclusive to jury nullification is evidence-free and falls in the face of Pro's empirical evidence; Con's point on criminals being stigmatized is a bare assertion that falls in the face of Pro's sources that prove the exact opposite. Pro gained a lot of offense just by proving, through sources, that Con was being factually inaccurate. The sources that Con did have were either not reliable or were in the wrong places. Con's source on the distinction between marijuana and cocaine was (1) not particularly relevant to the debate and (2) was from an opinion answer on Quora rather than a factual source. Similarly, Con's NPR source on sentencing disparities only served to prove the existence of racism in the justice system, which both sides agreed with, not proving the link to any place where *disagreement* existed. Con's source on African-American people not being selected to juries is useful, but it only serves to back up a defensive argument rather than a piece of offense. Pro's evidence backed up turns and offensive arguments that he made, and he barely made bare assertions. Thus, Pro wins sources.

== Feedback ==

Overall, this was a very high quality debate. The debate as a whole had two problems: (1) It was really long. Pro's R4 was over 19,000 characters long. Character-unconstrained rounds are problematic for three reasons: (a) They don't allow for the concise expression of ideas. (b) They don't reflect real-life debate at all, which is obviously time constrained. (c) They deter judges from reading the entire debate. (2) The format of the debate was super-weird. For some reason, Con decided to drop their own case in R3, and then to drop Pro's case in R4; Pro, similarly, decided to drop Con's case in R3 and their own case in R4. Especially for a character unconstrained round, that was pretty weird. My flow had so many blank spaces.

In terms of specific feedback: Pro's case needed two things, in my view. First, it needed a much clearer explanation of solvency, upfront, in terms of why (1) juries are likely to nullify in a way which aligns with justice and (2) jury nullification solves the problem *uniquely.* Second, it could've benefited from more rhetorical characterization of the problem, like the flourishes Con made throughout the debate. In particular, the problem could've also been represented as one of so many laws that virtually everyone is made a felon. I'd refer Pro to Thett3's characterization of this in his debate against Whiteflame. However, I did think Bsh1's case in this debate was better than Thett3's case in other respects.

Con needed three things: (1) Much more empirical evidence. I don't think debating on DART is suitable for a format of largely analytical warrants and rhetoric, especially in the face of Pro's evidence. (2) More line-by-line responses – Con's response-format forced them to drop a lot of things. (3) More ability to evolve with the debate. By this, I mean Con had to simply reiterate things less and respond to Pro's responses, and recognize that Pro had a round before Con's in which they already responded to something.