

# Power of the Jury Established by Brave Britishers in 1670



*Sending luckier citizens scurrying from sight and seizing the unfortunates who were too surprised to move, a corps of turnkeys, on orders of the king, spread over the streets of London. Clerks were pulled from their stools; carriages were stopped and passengers forcibly requisitioned. Sixty or 70 Englishmen were collared in swift order and brought to the Central Criminal Court of London for examination.*

*They had committed no crime. The king's men were "selecting" them for an unwelcome task: jury duty.*

*Despite the Magna Carta's 450-year-old guarantee of trial "by one's equals," English juries were expected to behave like judicial puppets -- parroting the court's wishes. Not only did courts dictate verdicts, but jurors were given no food or water, or access to the most elementary forms of sanitary facilities until the expected verdicts were delivered. In the few cases where juries did defy the courts, defendants might be freed, but the jurors were themselves heavily fined and imprisoned. Understandably, few jurors had the stamina to acquit a defendant who was a victim of government oppression.*

*The date of the juror roundup was Wednesday, August 31, 1670. By day's end, all but 12*

*luckless Londoners had been released. Those remaining, however, were to find themselves unwilling participants in a trial that would set a legal precedent and shake the throne itself.*

**By Godfrey Lehman  
From "Your Heritage News"**

On September 3, the trial of 25-year-old Quaker William Penn and an older colleague, William Mead, began in the Central Criminal Court. Penn and Mead had been arrested and confined to the dreaded Newgate Prison on August 14, when a group of 300-400 Quakers assembled for worship at their Gracechurch Street meetinghouse. There they confronted a phalanx of redcoats, each of whom nervously gripped a cocked carbine.

Stepping forward, the troop's lieutenant pleaded with Penn that the group not hold a religious service that Sunday morning, because their Quaker worship violated the law. He read them the pertinent provisions of the elaborate Conventicle Act, which established one legal church: the Church of England.

Penn responded that there was a higher law, a law that permitted every man and woman to worship God or not to worship, according to the dictates of his own conscience.

Denied entrance to the meetinghouse, Penn began his worship service in the street. He and Mead were arrested and indicted for "leading a conventicle, conducting an unlawful and tumultuous assembly...to the disturbance of the peace," and "conspiring and abetting together" to do the same.

King, Parliament, and the Central Criminal Court united for a trial designed both to silence Penn forever and to put an end to the despised Quakers and other dissidents who defied the Established church.

### **KANGAROO COURT**

Although the court assembled on Thursday, September 1, and the indictments were read and the pleas of "not guilty" recorded, the trial itself did not begin until Saturday, September 3. The 12 jurors had been confined in the Sessions House, also known as the Old Bailey, for two days.

A parade of carefully coached military witnesses testified to the guilt of both prisoners. Neither Penn nor Mead was given an opportunity of cross-examination or allowed to present witnesses.

They did not deny the "holding of a conventicle," but they asserted their right to religious freedom under the Magna Carta, They had assembled peaceably, the only disturbance being caused by the soldiers.

By late afternoon it had become "clear and manifest" that they had violated the law. All that was left was for the jury to go through the motions of returning the guilty verdict, as the court directed. The defendants would be convicted, perhaps never to be released from prison.

From 7:00 a.m. until late afternoon, the 12 jurors had been sitting on rough benches. Now they were told that as soon as they had convicted the prisoners, they would be permitted relief and treated to a sumptuous, court-hosted banquet.

Following precedent, the court granted the jurors one quarter of an hour to agree on the guilt of both prisoners. The quarter-hour passed, and the jurors did not return. Half an hour. An hour.

No jury. Finally, after an hour and a half, eight returned, and the court ordered the bailiffs to drag forth the other four.

### **VERDICTS**

"We have no verdict," the jurors told the court. The judges raged. Such defiance of the authoritarian powers of the king, Parliament and venal court! Still, there could be no conviction without the jury acceding.

Back the jury went for another half-hour, and then they returned to the Sessions House. The clerk asked for the verdict, and the foreman arose. For Penn: "guilty of speaking in Gracechurch Street." For Mead: "Not guilty of the indictment."

The court was incredulous. There was no law against "speaking." The verdict meant nothing.

"Is that all?" asked the recorder.

"That is all I have in my commission," responded the stoical foreman.

"You have as good as said nothing," a judge roared at them. The presiding "justice," the lord mayor of London, Sir Samuel Starling, pounded his desk and demanded to know why the jurors would not obey the directive of the court.

One Edward Bushell arose to respond : "The court has no power in Magna Carta to dictate the jury's verdict."

"This court has any power it chooses!" the mayor shouted back. "To disobey it is to bring disgrace upon the court as well as upon yourselves."

"We do follow our consciences, which is to bring honor to this court, and we can do no other." If this be not honor, then, we charge, this court has

no honor."

"Your insolence is beyond endurance. It is the direct order of this court that you bring in 'guilty' verdicts against both prisoners."

"No, my lord," said Bushell, unyieldingly. "This the jury will never do, for we will not betray the liberties of this country. We know our rights in Magna Carta."

"These rights will starve you."

"So be it, my lord, but on this point we will not equivocate. We will never yield our rights as Englishmen."

The Old Bailey went wild. The 500 spectators cheered for minutes. Never had a court of law been so successfully put down. Never had the entire government been so effectively overpowered by a handful of conscientious common people -- or "bumbleheads," as the mayor called them.

## **JURY STARVED**

Frustrated, the justices refused to accept the verdicts. They commanded the bailiffs to lock up the hungry jurors overnight, still without food, water or even a chamber pot. As a concession, the mayor agreed to convene the court on Sunday, "in the interests of the health of the jurors."

The 12 spent a fitful night on the floor of the badly equipped jury room, receiving limited rations from the sympathetic public, who sent up packages through the windows until driven back by soldiers.

Bedraggled, aching and filth-ridden, the jurors returned to the Sessions House Sunday morning with the same verdicts. Back and forth between jury room and courtroom the 12 were shuttled, but their verdicts remained: Penn: "guilty of speaking in Gracechurch Street"; Mead: "not guilty of the indictment."

Nor would the court give in. By mid afternoon,

the disgusted justices locked up the jurors, again without food, for the night. The jurors survived on the meager emotional succor of citizens shouting their encouragement from a distance.

When the court assembled on Monday morning the jurors were soaked with urine and feces. Several had a high fever. The mayor asked for the verdict, and the weakened foreman, barely able to stand, delivered a new and unexpected response: "Not guilty, for each prisoner," he shouted to the question.

The shocked court forced each juror to stand in turn and "take responsibility" for this more decisive verdict. Twenty-four times, the words rang out: "Not guilty!"

Led by Edward Bushell, the jury had acquitted because, "Every man has a right to worship God according to his own conscience."

The twelve had determined to sit until death on that principle. Yield at this point, Bushell had impressed upon his colleagues, and their families and all England would be enslaved. No one but the jurors stood between religious liberty and thought control.

On September 5, 1670, the justices capitulated. The Magna Carta and twelve stout men had struck a decisive blow for freedom. The Conventicle Act fell. Penn and Mead were freed, never to be brought to trial again.

## **REVENGE**

Nonetheless, the court was determined to have its revenge. For "going against clear and manifest evidence," the jurors were fined "40 marks" -- equivalent to perhaps half a year's earnings.

Eight paid, but four, again led by the stalwart Bushell, refused. Although Bushell was a man of great wealth and commanded an international shipping enterprise, and although the payment of 40 marks, or even 480 marks for the entire jury, was a mere pittance for him and a far smaller

loss than continued absence from his business, he would not pay.

"My liberty is not for sale," he responded. To pay would emasculate the victory. It would be a form of apologizing for acting in good conscience.

Thus he and three others - John Bailey, Charles Milson, and John Hammond - were imprisoned in the same "hell above ground" from which their courageous action had freed Penn and Mead.

In Newgate, they were subjected to degrading brutality from sadistic jailers.

They appealed through the distinguished Sir Richard Newdigate, a retired chief justice under Cromwell and a lifelong champion of the people's liberties. Sir Richard came out of retirement to argue the case before the Court of Common Pleas, a civil court, which actually did not have jurisdiction to hear a criminal appeal. The Court of King's Bench handled criminal appeals of the crown. But Newdigate cleverly managed to convince the not-reluctant chief justice of common pleas, Sir John Vaughn, to accept the appeal.

It took nine painful weeks for the legal maneuvering, the hearing, and finally for the court to write its lengthy opinion -- the jurors all the while suffering the rigors of Newgate. Sir John had been more or less predisposed to his decision, but it was necessary to cite many cases to build a foundation for a precedent.

## **FREEDOM WINS**

On November 9, he took "the clearest position I have ever taken" both for law and reason: The power of the jury to determine its verdict, free and untrammelled, is supreme.

No court has the power to punish juries for verdicts. The evidence could not have been "clear and manifest," for it did not appear so the jury. Acquittal by a jury is absolute.

The four jurors had suffered imprisonment for ten weeks, but they emerged victorious.

The precedent established by the heroic jurors is felt in every jury trial today, for it ensured the free and independent jury. By destroying the Conventicle Act, it advanced the cause of religious freedom. This liberty was incorporated into the English Bill of Rights 19 years later, and, a century after, into our own First Amendment.

In 1688, another jury, following the Bushell precedent, acquitted of treason a group of religious "dissidents" -- this time seven Anglican bishops who had been ordered by King James II to read Roman Catholic precepts from their pulpits. For this "trial of the seven bishops," the king had hand picked several jurors, but without avail.

Bushell had been released on *habeas corpus* -- the first such writ issued by the Court of Common Pleas. Since the congregation meeting had been orderly, the jury also established the rights of peaceful assembly and freedom of speech. By its courageous stand, it demonstrated that one of the strongest powers in government is the jury in a jury room.

Freedom seems ensured so long as this "bulwark of every citizen's liberty," as William Blackstone termed the jury in the 18th century, continues strong and independent.



Godfrey D. Lehman has authored several books and numerous articles on the subject of juries.

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