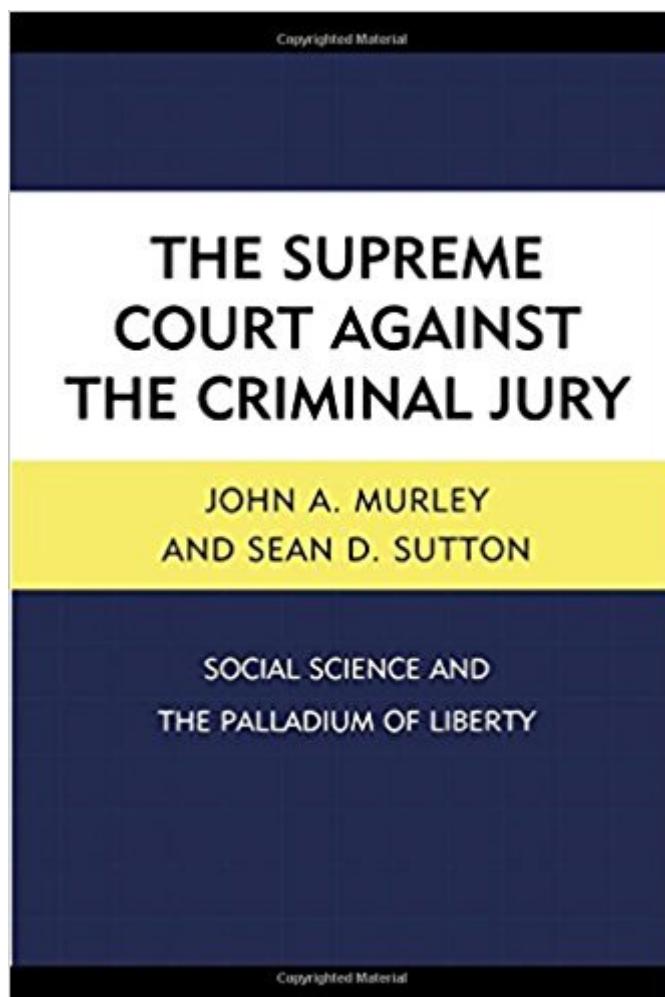


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# The Supreme Court Against The Criminal Jury: Social Science And The Palladium Of Liberty



## Synopsis

The Supreme Court against the Criminal Jury: Social Science and the Palladium of Liberty is an analysis of the United States Supreme Court decisions in what has come to be called the "jury-size" and "jury-decision rule" cases. In *Williams v. Florida* (1970) and *Ballew v. Georgia* (1978), a majority of the Supreme Court looked to history, empirical studies, and functional analysis to support its claim that there was "no discernible difference" between the verdicts of juries of six and juries of twelve. In the process the Court also decided that the number twelve was an historical accident and that the twelve-member jury was not an essential ingredient of trial by jury. Two years later, the Court, following essentially the same line of reasoning used in *Williams*, decided in the companion cases *Apodaca v. Oregon* (1972) and *Johnson v. Louisiana* (1972) that defendants were as well served with juries that reached verdicts by a majority vote of 11-1, 10-2 and 9-3 as they were with unanimous jury verdicts. In these cases the Supreme Court rejected the centuries old common law view that the unanimous jury verdict was an essential element of trial by jury. With these four decisions, the criminal jury as it had been known for more than six hundred years under the common law and the Constitution was in principle abandoned. We critique these decisions from the perspective of unreliable jury studies and the impact of these decisions on jury nullification.

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## Customer Reviews

The right in criminal cases to a trial by jury of twelve members who must agree on a unanimous verdict is deeply rooted in the common law tradition and the American Constitution. In criticizing the

Supreme Court decisions that have rejected this tradition, Murley and Sutton have written a lively and rigorous defense of trial by jury— including jury nullification—as a school for American democratic citizenship. (Larry Arnhart, Northern Illinois University) This book is a deeply informed and rigorous defense of the American legal tradition of trial by jury as indispensable for the civic deliberation that moderates the tyrannical tendency of democracy with a responsible concern for the rights of the individual. The jury functions as one of those democratic institutions that protects the rule of law from the whims of men (and women). We can only hope that our Court will pay attention and reform ill-considered majoritarian reform for which it has been responsible. (Peter A. Lawler, Berry College) In four much-criticized 1970s cases, the Supreme Court abandoned tradition and held that states may use criminal juries with fewer than 12 members or juries that decide by less than unanimity, though not both simultaneously. Does it matter? Are smaller or nonunanimous juries not good at protecting citizens from corrupt, biased, or overzealous officials? Researchers conducted numerous studies using a variety of social-science methods. Their findings were equivocal. But by the 1990s, it was clear that the new juries did not save as much public money as expected; few states made much use of them, so scholarly attention waned. Murley and Sutton take the conservative position that before abandoning tradition, the court should have proved that the new juries were not inferior, and the authors argue correctly that the court did not. They assert that the new rule “tilts the jury trial in favor of the government,” by discouraging jury nullification. . . . Indeed, nullification may be increasing. The jury is still out on the impact of using smaller or nonunanimous juries. Summing Up: Recommended. Upper-division undergraduate, graduate, and research collections. (CHOICE)

John A. Murley is emeritus professor and former chair of the Department of Political Science at the Rochester Institute of Technology. Sean D. Sutton is chair of the Department of Political Science at the Rochester Institute of Technology.

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