

XXIII. FOUNDATIONS OF LAW, LESSON 20: ROAD TO REMEDY, THE CITIZEN GRAND JURY

A. Introduction- The Importance of Grand Juries in Holding Government Accountable

In the bustling streets of Colonial Massachusetts during the tumultuous year of 1765, Samuel Adams, a passionate advocate for colonial rights, found himself at the forefront of a brewing storm. With the British Parliament imposing the Stamp Act—a tax on all paper goods without colonial representation—Adams, alongside his compatriots in the Sons of Liberty, resolved to resist the unjust levy.

One crisp autumn evening, gathered in the dimly lit confines of a local tavern, Samuel Adams and a cadre of Sons of Liberty members convened. They spoke fervently, their voices hushed yet resolute, discussing strategies to defy the Stamp Act and thwart its enforcement by British authorities. Amidst the candlelit ambiance, someone proposed a daring idea: to form a citizen grand jury.

The concept resonated deeply with Samuel Adams and his comrades in the Sons of Liberty. Inspired by their fervent belief in self-governance and justice, they envisioned a grassroots tribunal composed of respected community leaders and patriots. This citizen grand jury would wield the authority to investigate cases of Stamp Act compliance within their town, ensuring that no one would capitulate to the unjust demands of the British Crown.

With fervor and determination, Samuel Adams and the Sons of Liberty set their plan into motion. They discreetly recruited individuals known for their integrity and steadfast commitment to colonial liberties. Meetings were held in secret, away from the prying eyes of British loyalists, where they meticulously gathered evidence of Stamp Act compliance or dissent among local merchants and citizens.

As weeks turned into months, the citizen grand jury gained momentum and respect within the community. It became a symbol of defiance against tyranny—a testament to the power of local governance and the resolve of ordinary citizens to uphold their rights and liberties against imperial oppression.

One pivotal day, news spread like wildfire through the streets: the citizen grand jury had rendered its first verdict. In a unanimous decision, they condemned a local merchant who had chosen to comply with the Stamp Act, despite the collective resistance championed by Samuel Adams and the Sons of Liberty. The merchant, publicly shamed and ostracized, swiftly reversed course, aligning himself with the patriotic cause.

The impact was profound and far-reaching. Across Colonial Massachusetts, similar citizen-led initiatives sprang up, bolstering the spirit of resistance against British overreach. Samuel Adams and the Sons of Liberty knew they were part of something larger—a movement that would eventually ignite the flames of revolution and shape the course of American history.

The story of Samuel Adams and the Sons of Liberty's citizen grand jury during the Stamp Act era serves as a poignant reminder of the power of grassroots activism and community solidarity in the face of adversity. It highlights the lasting impact of everyday people joining forces to safeguard their rights and freedoms—a legacy that echoes through American history.

"We, the People, possess a fundamental right to hold our government accountable. This principle is enshrined in the Declarations or Bills of Rights of several states, which affirm that government officials are answerable to the people at all times. For instance, the Virginia Declaration of Rights articulates in Section 2 that 'all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them' (Virginia Const. art. 1, § 2).

However, a pressing question arises: how can ordinary citizens ensure that government officials and institutions uphold justice and adhere to the law? Moreover, how do we hold the government accountable when we seemingly require the government's permission to do so?

B. Defining Grand Juries – Official and Citizen Types

A jury of inquiry who are summoned and returned by the sheriff to each session of the criminal courts, and whose duty is to receive complaints and accusations in criminal cases, hear the evidence adduced on the part of the state, and find bills of indictment in cases where they are satisfied a trial ought to be had. They are first sworn, and instructed by the court.

*This is called a "grand jury" because it comprises a greater number of jurors than the ordinary trial jury or "petit jury." At common law, a grand jury consisted of not less than twelve nor more than twenty-three men, and this is still the rule in many of the states, though in some the number is otherwise fixed by statute; thus in Oregon and Utah, the grand jury is composed of seven men; in South Dakota, not less than six nor more than eight; in Texas, twelve; in Idaho, sixteen; in Washington, twelve to seventeen; in North Dakota, sixteen to twenty-three; in California, nineteen; in New Mexico, twenty-one. See *Ex parte Bain*, 121 U.S. 1, 7 S.Ct. 781, 30 L. Ed. 849; *In re Gardiner*, 64 N.Y.S. 760, 31 Misc. 364; *Finley v. State*, 61 Ala. 204; *People v. Duff*, 65 How. Prac., N.Y., 365; *English v. State*, 31 Fla. 340, 12 So. 689; *Jones v. McClaghry*, 169 Iowa, 281, 151 N.W. 210, 216.*

C. Types of Grand Juries

1. Official Grand Jury:

- a. Formation: The official grand jury, which is selected through a legal process, operates under the supervision of a court, and follows specific procedures.
- b. Purpose: Its role in the judicial system, includes issuing indictments, investigating criminal activity, and safeguarding citizens against unfounded charges.
- c. Jury Wheel:

2. Citizen (Common Law) Grand Jury:

- a. Concept: The citizen grand jury is rooted in historical common law practices, where citizens independently investigate and address grievances without government oversight.
- b. Purpose: The intention behind citizen grand juries to serve as a check on government power and promote direct citizen involvement in justice.

D. The Importance of Grand Juries

1. Safeguarding Rights

- a. Protection Against Arbitrary Prosecution: Grand juries act as a buffer between the state and the individual, protecting citizens from arbitrary or malicious prosecutions.

2. Ensuring Government Accountability

- a. Investigative Power: Grand juries can investigate government corruption and misconduct, holding officials accountable for their actions.

3. Promoting Transparency

- a. Public Trust: Grand juries enhance public trust in the legal and political systems by ensuring that justice is administered fairly and impartially.

E. Constitutional Mandate

1. **No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Constitution, Amendment V**

a. **Definition: Capital Crime-** One in or for which death penalty may, but need not necessarily, be inflicted., **Lee v. State, 31Ala.App. 91, 13 So.2d 583, 587.**

b. **Definition: Infamous Crime-** A crime punishable by imprisonment in state prison or penitentiary, with or without hard labor, is an infamous crime within the provision of the fifth amendment of the constitution that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." (**Mackin v. U. S., 117 U.S. 348, 6 S.Ct. 777, 29 L.Ed. 909; Brede v. Powers, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132.**) It is not the character

of the crime but the nature of the punishment which renders the crime "infamous." (**Weeks v. United States**, C.C.A.N.Y., 216 F. 292, 298, L.R.A. 1915B, 651.) However, see **Drazen v. New Haven Taxicab Co.**, 95 Conn. 500, 111 A. 861, 864. Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed. (**United States v. Moreland**, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700; **De Jianne v. U. S.**, C.C.A.N.J., 282 F. 737, 740; **Le Clair v. White**, 117 Me. 335, 104 A. 516, 517.)

2. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate. **Alabama Const. art. 1, § 36.**
3. **Maxim of Law 62p.** An unconstitutional Act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed. **Norton v. Shelby County**, 118 U.S. 425,442.
4. The constitution and laws of a state are the basis of public tranquillity, the firmest support of political authority, and a security for the liberty of the citizens. **But this constitution is a vain phantom, and the best laws are useless, if they be not religiously observed: the nation ought then to watch very attentively, in order to render them equally respected by those who govern, and by the people destined to obey. To attack the constitution of the state, and to violate its laws, is a capital crime against society; and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are entrusted.** The nation ought constantly to repress them with its utmost vigour and vigilance, as the importance of the case requires. It is very uncommon to see the laws and constitution of a state openly and boldly opposed: it is against silent and gradual attacks that a nation ought to be particularly on its guard. Sudden revolutions strike the imaginations of men: they are detailed in history; their secret springs are developed. But we overlook the changes that insensibly happen by a long train of steps that are but slightly marked. It would be rendering nations an important service, to show from history, how many states have thus entirely changed their nature, and lost their original constitution. This would awaken the attention of mankind:—impressed thenceforward with this excellent maxim (no less essential in politics than in morals), *principiis obsta*, they would no longer shut their eyes against innovations, which, though inconsiderable in themselves, may serve as steps to mount to higher and more pernicious enterprises. **Law of Nations, Book I, Chapter III, Section 30. Of support of the constitution and obedience to the laws.**

F. How Grand Juries Have Been Diminished

1. Erosion of Independence
 - a. Prosecutorial Influence: Modern grand juries are often heavily influenced by prosecutors, which can undermine their independence and objectivity.

2. Secrecy and Lack of Transparency
 - a. Closed Proceedings: The secretive nature of grand jury proceedings, which can lead to perceptions of unfairness and lack of accountability.
3. Reduced Usage
 - a. Declining Role: Some jurisdictions have reduced the use of grand juries, opting for alternative procedures like preliminary hearings, thus diminishing their traditional role.
4. **Landmark Cases Or Legal Precedents That Significantly Impacted The Use Of Grand Juries**
 - a. **Hurtado v. California (1884) Impact:** The U.S. Supreme Court ruled that the Fourteenth Amendment does not require states to indict individuals through a grand jury. This decision allowed states the flexibility to use alternative methods, such as preliminary hearings, to bring criminal charges. This case set a precedent for the decline of mandatory grand jury use in state courts.
 - b. **Costello v. United States (1956) Impact:** The Supreme Court held that a grand jury indictment based solely on hearsay evidence is valid. This case reinforced the broad discretion given to grand juries and confirmed that they are not bound by the same evidentiary rules as trial courts, thus underscoring their investigatory rather than adjudicatory role.
 - c. **United States v. Calandra (1974) Impact:** The Supreme Court ruled that evidence obtained in violation of the Fourth Amendment could be presented to a grand jury. This decision highlighted the grand jury's broad investigatory powers and limited the applicability of the exclusionary rule, which is designed to deter illegal searches and seizures, in the context of grand jury proceedings.
 - d. **Branzburg v. Hayes (1972) Impact:** The Supreme Court decided that journalists do not have a First Amendment right to avoid testifying before a grand jury. This ruling emphasized the grand jury's authority to compel testimony and gather information, reinforcing its role in investigating and bringing indictments.
 - e. **United States v. Williams (1992) Impact:** The Supreme Court ruled that prosecutors are not required to present exculpatory evidence to grand juries. This decision affirmed the prosecutorial discretion in grand jury proceedings and underscored the notion that the grand jury's function is to determine whether there is probable cause to believe a crime has been committed, not to adjudicate guilt or innocence.
 - f. **Ex parte Bain (1887) Impact:** The Supreme Court initially ruled that courts could not amend a grand jury indictment. However, this decision was later effectively overturned by subsequent rulings that allowed certain amendments, thus modifying the procedural aspects of grand jury indictments and their rigidity.
 - g. **Stirone v. United States (1960) Impact:** The Supreme Court held that a defendant cannot be convicted of an offense not charged by the grand jury, emphasizing the need for specificity in indictments. This ruling reinforced the protection against prosecutorial overreach and ensured that defendants are fully informed of the charges against them.

G. Restoring the Role of Grand Juries

1. Educational Initiatives:
 - a. Discuss the importance of the role and value of grand juries to garner support for their restoration.
 - b. Fifth Amendment: Highlight the incorporation of grand juries into the U.S. Constitution, ensuring that serious criminal charges must be reviewed by a grand jury before proceeding to trial.
 - c. Empower citizens to participate in grand juries, including education and training programs on their rights and responsibilities.
2. Enhancing Transparency
 - a. Open Proceedings: Suggest measures to increase transparency in grand jury proceedings, including limited public access or publishing findings while protecting sensitive information.
3. Policy Advocacy
 - a. Legislative Action: Promote policy advocacy to restore and strengthen the grand jury system, ensuring it can effectively serve its purpose in modern governance.
 - b. Advocate for and instruct government to reform government to ensure grand juries operate independently of prosecutorial control, such as introducing independent counsel or oversight mechanisms.

PART II. Tactical Civics

1. Can you briefly introduce yourself and Tactical Civics?
2. Can you explain the origins of the grand jury system and its initial purpose?
3. What significant legal reforms or changes have grand juries undergone over the centuries?
4. What are some of the primary reasons for the decline in the use of grand juries in recent decades?
5. How do current grand jury practices differ from their historical counterparts?
6. How can Tactical Civics help us restore the founder's intention for grand juries?