



COMMENTARY &amp; OPINION ON HISTORY &amp; POLITICS

## Hugh's News

# Citizens as sovereigns

by Hugh Turley

The United States leads the world with the highest percentage of its population in prison. Maybe it's time to consider whether it makes sense to incarcerate harmless people.

The recent case of Malcolm Hines, 40, is a good example. After being released from prison in 2007 for a cocaine-dealing charge, Hines has been an upstanding citizen operating a shoe store on Martin Luther King Avenue in Southeast D.C. He is a husband and a father.

His store had a string of burglaries and holdups; it's located

in a neighborhood plagued by 110 gun crimes in the past year, including assaults, robberies and killings. His sister-in-law hid a shotgun in the shop for protection. Acting on a tip, police found the gun and charged Hines with being a felon in possession of a gun. Now, after his conviction in October, he faces a minimum of three years in prison.

The conviction may make the judge and prosecutor look tough on crime, but dangerous criminals still roam the streets. While he was awaiting sentencing, gunmen robbed Hines' store — again.

Hines was not accused of harming anyone. Perhaps the jury should have considered whether the community (not to mention the Hines family) are well served by putting him in prison? Is it a good law? Is the law being justly applied? Does the punishment fit the crime?

According to Hines' wife, Sherita, the judge instructed the jury that "if it is reasonable to believe that Mr. Hines knew there was a gun in the shop, then you must find him guilty."

Sadly, the jury was not fully informed about its role. In 1717, John Adams said of the trial

juror, "It is not only his right, but his duty ... to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the direction of the court."

When a jury votes to acquit because it deems a law to be unjust, it is called jury nullification, a process that pre-dates the U.S. Constitution. In 17th-century England, William Penn, a Quaker, was charged with preaching an illegal religion. A jury found him not guilty despite clear guilt because they refused to punish him for worshipping God according to his beliefs. Freedom of religion and trial by jury were carried over to the American colonies.

Jurors can act as sovereigns

and affirm or veto laws of questionable value that lack public support. Even as far south as Georgia during the 19th century, juries acquitted whites for aiding slaves escaping bondage. And during Prohibition, there was a 60 percent acquittal rate in alcohol prohibition cases.

Citizens can veto tyrannical laws if a War on Terror turns into a war on the Bill of Rights. Jurors can act to protect the first amendment "right of the people peaceably to assemble" by refusing to convict citizens arrested for protesting.

Juries serve to put criminals who harm others in prison. But they also guard against government tyranny. Shouldn't defending constitutional rights rise above a judge's instructions?