

# Quotes on the Powers and Duties of Juries

It is not only [the juror's] 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.

John Adams, 1771

.....it is usual for the jurors to decide the fact, and to refer the law arising on it to the decision of the judges. But this division of the subject lies with their discretion only. And if the question relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact.

Thomas Jefferson, "Notes on Virginia," 1782

Another apprehension [about the French Revolution] is, that a majority cannot be induced to adopt the trial by jury; and I consider that as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution....

Thomas Jefferson, Letter to Tom Paine, 1789

It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your power of decision.....you have a right to take it upon yourselves to judge of both, and to determine the law as well as the fact in controversy.

Chief Justice John Jay, *Georgia v. Brailsford*, 1794

Jurors should acquit, even against the judge's instruction...if exercising their judgement with discretion and honesty they have a clear conviction that the charge of the court is wrong.

Alexander Hamilton, 1804

*Petty juries*, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions. The decision of a petty jury is called a *verdict*.

Noah Webster, *Dictionary of the English Language*, 1828

In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction

Article XXIII, Constitution of the State of Maryland

In all criminal cases whatsoever, the jury shall have the right to determine the law and the facts.

Article I, §19, Constitution of the State of Indiana

The question here arises, Whether the barons and the people intended that those peers (the jury) should be mere puppets in the hands of the king, exercising no opinion of their own as to the intrinsic merits of the accusations they should try, or the *justice* of the laws they should be called on to enforce? Whether those haughty and victorious barons, when they had their tyrant king at their feet, gave back to him his throne, with full power to

enact any tyrannical laws he might please, reserving only to a jury...the contemptible and servile privilege of ascertaining, (under the dictation of the king, or his judges, as to the laws of evidence), the simple *fact* whether those laws had been transgressed? Was this the only restraint, which, when they had all power in their hands, they placed upon the tyranny of a king, whose oppressions they had risen in arms to resist? Was it to obtain such a charter as that, that the whole nation had united, as it were, like one man, against their king? Was it on such a charter that they intended to rely, for all future time, for the security of their liberties? No. They were engaged in no such senseless work as that. On the contrary, when they required him to renounce forever the power to punish any freeman, unless by the consent of his peers, they intended those peers should judge of, and try, the whole case on its merits, independently of all arbitrary legislation, or judicial authority, on the part of the king. In this way they took the liberties of each individual -- and thus the liberties of the whole people -- entirely out of the hands of the king, and out of the power of his laws, and placed them in the keeping of the people themselves. And this it was that made the trial by jury the palladium of their liberties.

The trial by jury, be it observed, was the only real barrier interposed by them against absolute despotism. Could this trial, then, have been such an entire farce as it necessarily must have been, if the jury had had no power to judge of the justice of the laws the people were required to obey? Did it not rather imply that the jury were to judge independently and fearlessly as to everything involved in the charge, and especially as to its intrinsic justice, and thereon give their decision, (unbiased by any legislation of the king,) whether the accused might be punished? The reason of the thing, no less than the historical celebrity of the events, as securing the liberties of the people, and the veneration with which the trial by jury has continued to be regarded, notwithstanding its essence and vitality have been almost entirely extracted from it in practice, would settle the question, if other evidences had left the matter in doubt.

Lysander Spooner, *An Essay on the Trial by Jury*, 1852

It is universally conceded that a verdict of acquittal, although rendered against the instructions of the judge, is final, and cannot be set aside; and consequently that the jury have the legal power to decide for themselves the law involved in the general issues of guilty or not guilty.

Justices Gray and Shiras, *Sparf and Hansen v. United States*, 1894, dissent

The jury has the power to bring a verdict in the teeth of both the law and the facts.

Justice Oliver Wendell Holmes, *Horning v. District of Columbia*, 1920

If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by a judge, and contrary to the evidence...If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision.

4th Circuit Court of Appeals, *United States v. Moylan*, 1969

[The jury has an] unreviewable and irreversible power...to acquit in disregard of the instructions on the law given by the trial judge...The pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge; for example, acquittals under the fugitive slave law.

D.C. Circuit Court of Appeals, *United States v. Dougherty*, 1972

'You're not concerned with the law, Members of the Jury,' I told them, 'you are concerned with justice!'

'That is a quite outrageous thing to say! On the admitted facts of this case, Mr O'Higgins is clearly guilty!' His Honour Judge Graves had decided but the honest twelve would have to return the verdict and I spoke to them. 'A British judge has no power to direct a British jury to find a defendant guilty! I know that much at least.'

'I shall tell the Jury that he is guilty in law, I warn you.' Graves's warning was in vain. I carried on regardless.

'His Lordship may tell you that to his heart's content. As a great Lord Chief Justice of England, a judge

superior in rank to any in this Court, once said, "It is the duty of the Judge to tell you as a jury what to do, but you have the power to do exactly as you like." And what you do, Members of the Jury, is a matter entirely between God and your own consciences....'

Horace Rumpole [John Mortimer, "Rumpole à la Carte," *The Third Rumpole Omnibus*, Penguin Books, 1998, p.265]



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