

## Jurors Can Judge Both The Facts And The Law

From the outset, America's Founders realized that the temptations of power and corruption would someday be too much for any of the three branches of government to resist, let alone the checks and balances in the other branches. They foresaw the folly of trusting the government to protect individual rights and realized that, ultimately, Citizens at the local level, acting according to dictates of their individual consciences, would need to have the final authority, the final check and balance, expressed as veto power over bad laws.

So they provided for just such a veto, a centuries-old legal doctrine carried over from England to the colonies, via the common law, which holds that jurors may judge whether a law is a good law, a law that does not violate the rights of free men and women. By this doctrine, if according to the dictates of their consciences, jurors do not think a law is just, or if they think the law has been misapplied, they may decide not to convict an otherwise "guilty" defendant. Even a single juror can thus prevent a conviction, by voting "not guilty".

A verdict of "not guilty" cannot lawfully be overturned, nor can a judge harass the jurors for voting for acquittal. Jurors can never be punished for voting their consciences, even if they have taken a (fraudulent) oath under duress to follow the law as stated by the judge!

Article I, Section 6, of the current Constitution of Pennsylvania states, in part:

**"Trial by jury shall be as heretofore and the right thereof remain inviolate." ...**

In 1920, the Pennsylvania Supreme Court stated:

**"the provision that trial by jury shall be as heretofore and the right thereto remain inviolate has been a fundamental principle in this State from the time of Penn's charter [1682] ...; it was embodied in the Constitution of 1776, ..." [Commonwealth v. Collins, 268 Pa. 295, 299, (1920)]**

The right of the jury to decide questions of law was widely recognized in the colonies. In 1771, John Adams stated unequivocally that a juror should ignore a judge's instruction on the law if it violates fundamental principles:

**"It is not only ... [trial juror's] right, but his duty, in that case, to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court."**

There is also compelling evidence of the general acceptance of this principle in the period during and after the Constitution for the United States of America was adopted. For example:

**"Why do we love this trial by jury? Because it prevents the hand of oppression from cutting you off .... This gives me comfort - that, as long as I have existence, my neighbors will protect me."**

- Patrick Henry in June 1788, and

Thomas Jefferson said, in a letter to Thomas Paine in 1789:

**"I consider trial by jury as the only anchor yet devised by man, by which a government can be held to the principles of its constitution."**

Alexander Hamilton said, in 1804, that jurors should acquit even against the judge's instruction:

**"... if exercising their judgment with discretion and honesty they have a clear conviction that the charge of the court is wrong."**

John Jay, first Chief Justice, U.S. Supreme Court, wrote in Georgia v. Brailsford, 3 U.S. 1 (1794):

**"The jury has a right to judge both the law as well as the fact in controversy."**

Samuel Chase, Supreme Court Justice and signer of the Declaration of Independence, wrote in 1804:

**"The jury has the right to determine both the law and the facts."**

Theophilus Parsons, a leading supporter of the Constitution for the United States of America in the convention of 1788 by which Massachusetts ratified the Constitution, was appointed by President Adams in 1801 to be Attorney General of the United States of America, but declined that office, and became Chief Justice of Massachusetts, said in 1806:

**"The people themselves have it in their power effectually to resist usurpation, without being driven to an appeal to arms. An act of usurpation is not obligatory; it is not law; and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his fellow citizens can convict him; they are the jury, and if they pronounce him innocent, not all the power of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation."**

However, during the nineteenth century, judges and attorneys began chipping away at this vital and fundamental right of free Citizens, transferring more and more power to themselves, often contending that jury review of the law was "no longer necessary" - now that free, democratic elections had replaced monarchy.

Then, in 1895, the U.S. Supreme Court, in Sparf and Hansen v. U.S., 156 US 51 (1895), said it should be up to the judge to decide whether the jury would be told of its right to judge the law as well as the facts. The Supreme Court acknowledged that jurors have the power to judge the law, but, going against long-established constitutional principles, denied that it was a legal right. Justice Gary Shiras in his dissenting opinion stated:

**"Unless the jury can exercise its community conscience role, our judicial system will have become so inflexible that the effect may well be a protest into channels that will threaten the very continuance of the system itself. To put it another way, the jury is ... the safety valve that must exist if this society is to be able to accommodate its own internal stresses and strains. ... [I]f the community is to sit in the jury box, its decisions cannot be legally limited to a conscienceless application of fact to law."** [Sparf and Hansen v. U.S., 156 U.S. 51, 144 (1895)]

Today, jurors are fraudulently told that they must accept the law as the judge explains it, and may not decide to acquit a person because their consciences are bothered by what seems to them to be an unjust law. Judges and attorneys often say: "jury trials are too expensive and take too long" and/or "the people don't understand the law anyway" in a false attempt to justify the violation of the Citizens' rights.

Judges intentionally deceive jurors by telling them that their only role is to decide if the "facts" are sufficient to convict the defendant, and that if so, they "must" convict. Defense attorneys are not allowed to encourage jurors to vote to acquit because they believe the law is unjust or unconstitutional, and defendants are usually stopped short and rebuked if they so much as mention their motives to the jury.

William Kunstler, as quoted in Franklin M. Nugent's book, Jury Powers: Secret Weapon Against Bad Law, revised from Youth Connection 1988, stated:

**"Every jury in the land is tampered with and falsely instructed by the judge when it is told it must take (or accept) as the law that which has been given to them, or that they must bring in a certain verdict, or that they can decide only the facts of the case."**

In point of fact, jurors still, to this day, retain the power to veto, or "nullify" bad laws. They are just not told this by the courts. And judges and prosecutors exclude people from serving on juries who admit that they believe they can judge the law, or who have doubts about the justice of the law. This destroys the protections jurors were supposed to be able to muster on behalf of fellow citizens against unjust prosecutions. How can our right to a trial by an impartial jury of our peers be fulfilled if those who may have qualms about the law are routinely excluded from jury service?

**Those in government must always protect and defend our constitutionally protected rights!**