Quotes on Jury Authority and Jury Nullification

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"Trust in the jury is, after all, one of the cornerstones of our entire criminal jurisprudence, and if that trust is without foundation we must re examine a great deal more than just the nullification doctrine."
Judge David L. Bazelon, Dissent in United States v. Dougherty, 473 F.2d 1113, 1142 (D.C. Cir. 1972).

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.
U.S. v. Dougherty, D.C. Circuit Court of Appeals, 1972, 473 F.2d at 1130 and 1132. (Nevertheless, the majority opinion held that jurors need not be told this. Dissenting Chief Judge Bazelon thought that they ought to be so told.)

"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."
United States v. Moylan, 4th Circuit Court of Appeals, 1969, 417 F.2d at 1006.

The most quoted instruction empowering a jury to judge the law comes from a civil case. In a rare jury trial in the United States Supreme Court, Chief Justice John Jay, speaking for a unanimous Court, instructed the jury: "The facts comprehended in the case are agreed; the only point that remains, is to settle what is the law of the land arising from those facts; and on that point, it is proper, that the opinion of the court should be given. It is fortunate, on the present, as it must be on every occasion, to find the opinion of the court unanimous: we entertain no diversity of sentiment; and we have experienced no difficulty in uniting in the charge, which it is my province to deliver.

"It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of fact; it is, on the other hand, presumable, that the court are the best judges of the law. But still both objects are lawfully within your power of decision." Georgia v. Brailsford, 3 U.S. (3 Dall.) 1 (1794)

Schnier v. People, 23 Ill. 17, 30 (1859), quoted in Howe, Juries as Judges of Criminal Law, 52 Harv. L.Rev. 582, 611 (1939): [I]f they can say upon their oaths that they know the law better than the court does, they have the right to do so, but before assuming so solemn a responsibility, they should be sure that they are not acting from caprice or prejudice . . . but from a deep and confident conviction that the court is wrong and that they are right. Before saying this upon their oaths it is their duty to reflect, whether from their habits of thought, their study and experience, they are better qualified to judge of the law than the court.

John Adams, who became the second U.S. President, in 1771 said of the 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."

United States, but declined that office and became Chief Justice of Massachusetts in 1806) said:
"The people themselves have it in their power effectually to resist usurpation, [the wrongful seizure of authority] 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 his jury, and if they pronounce him innocent, not all the powers of Congress can hurt him; and innocent they certainly will pronounce him, if the supposed law he resisted was an act of usurpation." Elliot's Debates, 94; 2 Bancroft's History of the Constitution, p.267. Quoted in Sparf and Hansen v. U.S., 156 U.S. 51 (1895), Dissenting Opinion: Gray, Shiras, JJ., 144.

"The judge cannot direct a verdict it is true, and the jury has the power to bring in a verdict in the teeth of both law and facts." Mr. Justice Holmes, for the majority in Horning v. District of Columbia, 254 U.S. 135, 138 (1920).

"It is manifest from all the accounts we have of the courts in which juries sat, prior to the Magna Charta, such as the court baron, the hundred court, the court leet, and the county court, that they were mere courts of conscience, and that the juries were the judges, deciding causes according to their own notions of equity, and not according to any laws of the king, unless they thought them just." Lysander Spooner, An Essay on The Trial by Jury, 64 (John P. Jewett & Co., 1852).

"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 country") 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? . . . No . . . 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." Id. at 23.

"No freeman shall be arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or be outlawed, or exiled, or in any manner destroyed (harmed), nor will we (the king) proceed against him, nor send any one against him, by force or arms, unless according to (that is, in execution of) the sentence of his peers, and (or or, as the case may require) the Common Law of England, (as it was at the time of Magna Carta, in 1215.)"
(Spooner's translation of the Magna Charta Chapter 39.)

From Bushel's Case, Judge Vaughan wrote, explaining why jurors can't be punished for bringing a verdict against the instructions of the judge:
"To what end must they undergo the heavy punishment of the villainous judgment, if after all this they implicitly must give a verdict by the dictates and authority of another man, under pain of fines and imprisonment, when sworn to do it according to the best of their own knowledge?
A man cannot see by anothers eye, nor hear by anothers ear, no more can a man conclude or infer the thing to be resolved by anothers understanding or reasoning; and though the verdict be right the jury give, yet they being not assured it is so from their own understanding, are forsworn, at least in foro conscientiae."

How. St.Tr. 6:999 (1670) at 1012.

"As Juries have ever been vested with such power by Law, so to exclude them from, or disseize them of the same, were utterly to defeat the end of their institution. For then if a person should be Indicted for doing any common innocent act, if it be but clothed and disguised in the Indictment with the name of Treason, or some other high crime, and prov'd by Witnesses to have been done by him; the Jury though satisfied in Conscience that the fact is not such offense as 'tis called, yet because (according to this fond opinion) they have no power to judge of law, and the fact charg'd is fully prov'd, they should at this rate be bound to find him guilty. And being so found, the Judge pronounce sentence upon him; for he finds a convicted Traytor, &c. by his peers. And thus a certain Physician boasted, That he had kill'd one of his patients with the best method in the world; So here we should find an innocent man hang'd, drawn, and quarter'd, and all according to law."

Sir John Hawles, The Englishman's Right: A Dialogue between A Barrister At Law and a Jury Man, 12 (London, 1680) (reprinted Garland Publishing, 1978).
"Then, gentlemen of the jury, it is to you we must now appeal, for witnesses to the truth of the facts we have offered, and are denied the liberty to prove; and let it not seem strange, that I apply myself to you in this manner; I am warranted so to do, both by law and reason. The law supposes you to be summoned out of the neighbourhood where the fact is alleged to be committed; and the reason of your being taken out of the neighbourhood is, because you are supposed to have the best knowledge of the fact that is to be tried. And were you to find a verdict against my client, you must take upon you to say, the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous and seditious; but of this I can have no apprehension. You are citizens of New York: you are really, what the law supposes you to be, honest and lawful men; and according to my brief, the facts which we offer to prove were not committed in a corner; they are notoriously known to be true; and therefore in your justice lies our safety...

John Peter Zenger Case
Mr. Chief Justice. No, Mr. Hamilton, the jury may find that Mr. Zenger printed and published those papers, and leave it to the Court to judge whether they are libellous. You know this is very common: it is in the nature of a Special Verdict, where the jury leave the matter of law to the Court.
Mr. Hamilton. I know, may it please your honour, the jury may do so; but I do likewise know they may do otherwise. I know they have the right, beyond all dispute, to determine both the law and the fact; and where they do not doubt of the law, they ought to do so. This of leaving it to the judgment of the Court, whether the words are libellous or not, in effect renders juries useless (to say no worse) in many cases...
Gentlemen, the danger is great, in proportion to the mischief that may happen through our too great credulity. A proper confidence in a court is commendable; but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the direction of other persons. If you should be of opinion, that there is no falsehood in Mr. Zenger's papers, you will, nay, (pardon me for the expression) you ought to say so; because you don't know whether others (I mean the Court) may be of that opinion. It is your right to do so, and there is much depending upon your resolution, as well as upon your integrity."

Andrew Hamilton's defense of John Peter Zenger, from How. St. Tr. 17:698 (1735) at 703 720, .
"I believe no man will venture to say they have not the power, but I mean expressly to say they have the right. Where a civil power of this sort has been exercised without control, it presumes—nay, by continual usage, it gives—the right. It is the right which jurors exercised in those times of violence when the Seven Bishops were tried, and which even the partial judges who then presided did not dispute, but authorized them to exercise upon the subject matter of the libel; and the jury, by their solemn verdict upon that occasion, became one of the happy instruments, under Providence, of the salvation of this country. This privilege has been assumed by the jury in a variety of ancient and modern instances, and particularly in the case of Rex v. Owen, without any correction or even reprimand of the court. It is a right, for the most cogent reasons, lodged in the jury, as without this restraint the subject in bad times would have no security for his life, liberty or property."

Justice Willes, from the dissent in Dean of St. Asaph's Case, How. St.Tr. 21:847 (1785) at 1040 1041.
"[T]he jury had an undoubted right to form their verdict themselves according to their consciences, applying the law to the fact. If it were otherwise, the first principle of the law of England would be defeated and overthrown. If the twelve judges were to assert the contrary again and again, he would deny it utterly, because every Englishman was to be tried by his country; and who was his country but his twelve peers, sworn to condemn or acquit according to their consciences? If the opposite doctrine were to obtain, trial by jury would be a nominal trial, a mere form; for, in fact, the judge, and not the jury, would try the man. He could contend for the truth of this argument to the latest hour of his life, manibus pedibusque. With regard to the judge stating to the jury what the law was upon each particular case, it was his undoubted duty so to do; but, having done so, the jury were to take both law and fact into their consideration, and to exercise their discretion and discharge their consciences."

Sparf et al. v. United States, 156 U.S. 51 (1895) at 139, quoting 29 Parl. Hist.,1535, 1536.

"Jury (jurata, from the LAT. jurare, to swear) Signifies a certain number of men sworn to inquire of and try the matter of fact, and declare the truth upon such evidence as shall be delivered then in a cause: and they are sworn judges upon evidence in matter of fact.

The privilege of trial by jury, is of great antiquity in this kingdom; some writers will have it that juries were in use among the Britains; but it is more probably that this trial was introduced by the Saxons: yet some say that we had our trials by jury from the Greeks; (the first trial by a jury of twelve being in Greece.) By the laws of King Ethelred, it is apparent that juries were in use many years before the Conquest; and they are, as it were, incorporated with our constitution, being the most valuable part of it; for without them no man's life can be impeached, (except by parliament) and no man's liberty or property can be taken from him . . .

Juries are fineable, if they are unlawfully dealt with to give their verdict; but they are not fineable for giving their verdict contrary to the evidence, or against the direction of the court; for the law supposes the jury may have some other evidence than what is given in court, and they may not only find things of their own knowledge, but they go according to their consciences. Vaugh. 153, 3 Leon 147.

If a jury take upon them the knowledge of the law, and give a general verdict, it is good; but in cases of difficulty, it is best and safest to find the special matter, and to leave it to the judge to determine what is the law upon the fact. I Inst. 30."

Jacob's Law Dictionary (London, 1782). This was the most common legal dictionary in Colonial Virginia; it's definition is the one Madison would likely have relied on in writing the Sixth Amendment.

I would also like to thank David Dawson, who has provided the definition of the word "jury" given in the first edition of Noah Webster's Dictionary of the English Language (1828):
"JU•RY, n. (Fr. jure, sworn, L. juro, to swear.) A number of freeholders, selected in the manner prescribed by law, empaneled and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case. Grand juries consist usually of twenty four freeholders at least, and are summoned to try matters alledged in indictments. 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."

"The Chief Justice misdirected the jury, in saying they had no right to judge of the intent and of the law. In criminal cases, the defendant does not spread upon the record the merits of the defence, but consolidates the whole in the plea of not guilty. This plea embraces the whole matter of law and fact involved in the charge, and the jury have an undoubted right to give a general verdict, which decides both law and fact . . . All the cases agree that the jury have the power to decide the law as well as the fact; and if the law gives them the power, it gives them the right also. Power and right are convertible terms, when the law authorizes the doing of an act which shall be final, and for the doing of which the agent is not responsible.

"It is admitted to be the duty of the court to direct the jury as to the law, and it is advisable for the jury in most cases, to receive the law from the court; and in all cases, they ought to pay respectful attention to the opinion of the court. But, it is also their duty to exercise their judgments upon the law, as well as the fact; and if they have a clear conviction that the law is different from what is stated to be by the court, the jury are bound, in such cases, by the superior obligations of conscience, to follow their own convictions. It is essential to the security of personal rights and public liberty, that the jury should have and exercise the power to judge both of the law and of the criminal intent.

"The jury ought, undoubtedly, to pay every respectful regard to the opinion of the court; but suppose a trial in a capital case, and the jury are satisfied from the arguments of counsel, the law authorities that are read, and their own judgment, upon the application of the law to the facts, (for the criminal law consists in general of plain principles,) that the law arising in the case is different from that which the court advances, are they not bound by their oaths, by their duty to their creator and themselves, to pronounce according to their convictions? To oblige them, in such a case, to follow implicitly the direction of the court, is to make them commit perjury, and homicide, under the forms of law. The victim is sacrificed; he is executed; he perishes without redress.

"[I]n the general distribution of power, in any system of jurisprudence, the cognizance of law belongs to the court, of fact to the jury; that as often as they are not blended, the power of the court is absolute and exclusive. That, in civil cases, it is always so, and may rightfully be so exerted. That, in criminal cases, the law and fact being always blended, the jury, for reasons of a political and peculiar nature, for the security of life and liberty, are intrusted with the power of deciding both law and fact.

“That this distinction results, 1. From the ancient forms of pleading, in civil cases; none but special pleas being allowed in matters of law; in criminal, none but the general issue. 2. From the liability of the jury to attaint, in civil cases, and the general power of the court, as its substitute, in granting new trials, and from the exemption of the jury from attaint, in criminal cases, and the defect of power to control their verdicts by new trials; the test of every legal power being its capacity to produce a definitive effect, liable neither to punishment nor control.

“That, in criminal cases, nevertheless, the court are the constitutional advisers of the jury, in matters of law who may compromit their consciences by lightly or rashly disregarding that advice; but may still more compromit their consciences by following it, if, exercising their judgments with discretion and honesty, they have a clear conviction that the charge of the court is wrong.”
Alexander Hamilton, from his argument in People v. Croswell, 3 Johns. Cas. 336 (1804).

“In every criminal case, upon the plea of not guilty, the jury may, and indeed they must, unless they choose to find a special verdict, take upon themselves the decision of the law, as well as the fact, and bring in a verdict as comprehensive as the issue; because, in every such case, they are charged with the deliverance of the defendant from the crime of which he is accused.

“But while the power of the jury is admitted, it is denied that they can rightfully or lawfully exercise it, without compromitting their consciences, and that they are bound implicitly, in all cases to receive the law from the court. The law must, however, have intended, in granting this power to a jury, to grant them a lawful and rightful power, or it would have provided a remedy against the undue exercise of it. The true criterion of a legal power, is its capacity to produce a definitive effect liable neither to censure nor review. And the verdict of not guilty, in a criminal case, is, in every respect, absolutely final. The jury are not liable to punishment, nor the verdict to control.”

“I am aware of the objection to the fitness and competency of a jury to decide upon questions of law, and especially, with a power to overrule the directions of the judge. In the first place, however, it is not likely often to happen, that the jury will resist the opinion of the court on the matter of law. That opinion will generally receive its due weight and effect; and in civil cases it can, and always ought to be ultimately enforced by the power of setting aside the verdict. But in human institutions, the question is not, whether every evil contingency can be avoided, but what arrangement will be productive of the least inconvenience. And it appears to be most consistent with the permanent security of the subject, that in criminal cases the jury should, after receiving the advice and assistance of the judge, as to the law, take into their consideration all the circumstances of the case, and the intention with which the act was done, and to determine upon the whole, whether the act done be, or be not, within the meaning of the law. This distribution of power, by which the court and jury mutually assist, and mutually check each other, seems to be the safest, and consequently the wisest arrangement, in respect to the trial of crimes . . . To judge accurately of motives and intentions, does not require a master’s skill in the science of law. It depends more on a knowledge of the passions, and of the springs of human action, and may be the lot of ordinary experience and sagacity.
Chief Justice Kent’s opinion from the above case.

The only Supreme Court Justice ever impeached, Samuel Chase, was charged with denying the right of jurors to judge the law. His defense argued, among other things, that:
“As little can this respondent be justly charged with having, by any conduct of his, endeavored to ‘wrest from the jury their indisputable right to hear argument, and determine upon the question of law as well as the question of fact involved in the verdict which they were required to give.’ He denies that he did at any time declare that the aforesaid counsel should not at any time address the jury, or did in any manner hinder them from addressing the jury on the law as well as on the facts arising in the case. It was expressly stated, in the copy of his opinion delivered as above set forth to William Lewis, that the jury had a right to determine the law as well as the fact: and the said William Lewis and Alexander James Dallas were expressly informed, before they declared their resolution to abandon the defence, that they were at liberty to argue the law to the jury.”

United States v. Fries, 9 F.Cas. 924, 934 (D. Pennsylvania, 1800).

See also Judge Van Ness’ instruction to the jury in United States v. Poyllon, 27 F.Cas. 608, 611 (D.C.D.N.Y. 1812): “. . . this was in its nature and essence, though not in its form, a penal or criminal action; and they were therefore entitled to judge both of the law and the fact, and that the enforcing act could not apply in this case,” and John Marshall’s instructions to the jury in United States v. Hutchings, 26 F.Cas. 440, 442 (C.C.D.Vir. 1817): “That the jury in a capital case were judges, as well of the law as the fact, and were bound to acquit where either was doubtful.”

"Underlying the conception of the jury as a bulwark against the unjust use of governmental power were the distrust of 'legal experts' and a faith in the ability of the common people. Upon this faith rested the prevailing political philosophy of the constitution framing era: that popular control over, and participation in, government should be maximized. Thus John Adams stated that 'the common people... should have as complete a control, as decisive a negative, in every judgment of a court of judicature' as they have, through the legislature, in other decisions of government." Note (anon.) The Changing Role o of the Jury in the Nineteenth Century, Yale Law Journal, 74, 172,(1964).

"Since natural law was thought to be accessible to the ordinary man, the theory invited each juror to inquire for himself whether a particular rule of law was consonant with principles of higher law. This view is reflected in John Adams' statement that it would be an "absurdity" for jurors to be required to accept the judge's view of the law, "against their own opinion, judgment, and conscience." Note (anon.) The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal, 74, 172, (1964).

"...[T]he 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...[the juror's] right, but his duty, in that case, to find the verdict according to his own best understanding, judgment, and conscience, though indirect opposition to the direction of the court." There is much evidence of the general acceptance of this principle in the period immediately after the Constitution was adopted." Note (anon.), The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal 74, 173 (1964).

"During the first third of the nineteenth century,.. .judges frequently charged juries that they were the judges of law as well as the fact and were not bound by the judge's instructions. A charge that the jury had the right to consider the law had a corollary at the level of trial procedure: counsel had the right to argue the law its interpretation and its validity to the jury." Note (anon.), The Changing Role of the Jury in the Nineteenth Century, Yale Law Journal 74, 174,(1964).

"Jury acquittals in the colonial, abolitionist, and post bellum eras of the United States helped advance insurgent aims and hamper government efforts at social control. Wide spread jury acquittals or hung juries during the Vietnam War might have had the same effect. But the refusal of judges in trials of antiwar protesters to inform juries of their power to disregard the law helped ensure convictions, which in turn frustrated antiwar goals and protected the government from the many repercussions that acquittals or hung juries would have brought."
Steven E. Barkan, Jury Nullification in Political Trials, Social Problems, 31, No. 1, 38, October, 1983.

"...[T]he institution of trial by jury especially in criminal cases has its hold upon public favor chiefly for two reasons. The individual can forfeit his liberty to say nothing of his life only at the hands of those who, unlike any official, are in no wise accountable, directly or indirectly, for what they do, and who at once separate and melt anonymously in the community from which they came. Moreover, since if they acquit their verdict is final, no one is likely to suffer of whose conduct they do not morally disapprove; and this introduces a slack into the enforcement of law, tempering its rigor by the mollifying influence of current ethical conventions. A trial by any jury... preserves both these fundamental elements and a trial by a judge preserves neither..."
Judge Learned Hand, U.S. ex rel McCann v. Adams, 126 F.2d 774, 775 76 (2nd Circuit, 1942).

"It's easy for the public to ignore an unjust law, if the law operates behind closed doors and out of sight. But when jurors have to use a law to send a man to prison, they are forced to think long and hard about the justice of the law. And when the public reads newspaper accounts of criminal trials and convictions, they too may think about whether the convictions are just. As a result, jurors and spectators alike may bring to public debate more informed interest in improving the criminal law. Any law which makes many people uncomfortable is likely to attract the attention of the legislature. The laws on narcotics and abortion come to mind and there must be others. The public adversary trial thus provides an important mechanism for keeping the substantive criminal law in tune with contemporary community values."
D.C. Circuit Court Judge D. Bazelon, "The Adversary Process Who Needs It?" 12th Annual James Madison Lecture, New York University School of Law (April, 1971), reprinted in 117 Cong. Rec. 5852, 5855 (daily ed. April 29, 1971).