The Very Palladium of Free Government

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

These stirring words from the Declaration of Independence constitute the heart of our nation's political ideals – in fact, the heart of its political philosophy. Note how much is packed into so few, yet so eloquent sentences: We have certain unalienable Natural Rights, rights that cannot be taken from us. Rights that we have independently of government and that we retain even after we, the people, have established a government which government must rest on the consent of the governed, the consent of the people.

Why establish a government? To secure these rights. The purpose of government is the protection and enhancement of our Natural Rights. And, surely, at least in our ideology, our nation has placed rights at the center of our political

ideals. From our founding our political leaders have constantly reminded us, our allies, and our enemies of the centrality to our nation of freedom and rights. Which are these rights? The right of life, liberty, the pursuit of happiness and, perhaps most importantly, the right of popular sovereignty – the right of self government, the right of the people to set up a government and even to abolish it if its fails to protect our rights; the concept that ultimate political power rests with the people. It is the people who authorize the government and its Constitution. As the Preamble states: "We the people of the United States…do ordain and establish this constitution for the United States of America." Most importantly, it is the people who retain our Natural rights including the right of self-government even after they have delegated certain specific powers to the government.

However, unfortunately, the idea of Natural Rights is no longer such a clear conception to most Americans. Few of my students at the University of Cincinnati are familiar with this idea. Instead, they and other Americans are much more likely to think of rights in terms of what are properly called Legal Rights. Legal Rights are those that are recognized at a time by a specific government and its laws and constitution. Legal Rights derive from government and vary from nation to nation and time to time. Thus, the government of China does not grant its citizens the right of freedom of press or of assembly. They have no such Legal

Rights. But our Founders would insist that all people have such Natural Rights whether or not they are recognized by any given government.

This distinction between Natural Rights and Legal Rights was very familiar to our Founders and most Americans at the time of our independence. Most importantly, the Founders clearly believed that the primary purpose of constitutional government was the protection of these Natural Rights. Thus, for example, nearly all early state constitutions explicitly stated the protection of Natural Rights as the purpose of government.

Many Americans incorrectly believe that our rights are given in the Bill of Rights, the first ten amendments to the Constitution that were ratified fully four years after the Constitutional Convention. In fact there are some rights explicitly incorporated into the text of the body of the Constitution itself. Significantly, Article III, Section 2 reads in part: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; …" Clearly, by its presence as one of the very few rights listed in the body of the original Constitution, trial by jury must have been considered a central right. And this special status received even more emphasis in the Bill of Rights. Two of the first eight amendments are devoted entirely to trial by jury and three others offer further protection of the accused. Thus, the Sixth Amendment states in part "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

where in the crime shall have been committed,…" And the Seventh Amendment reads: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

Thus, an examination of the Constitution and the Bill of Rights supports the claim that the framers found trial by jury to be among the most important Natural Rights of the people. This analysis is further confirmed by the fact that the right to a jury in a criminal case was the only right secured in all state constitutions written between 1776 and 1787.[1] This may seem surprising to contemporary Americans given the fact that in today's courts in many jurisdictions up to 95% of criminal cases avoid trial by jury altogether through plea bargaining. Federal criminal trials number fewer than 5000 annually. Ironically, there may be more trials on TV reruns of Perry Mason and on other Law and Order shows than in actual federal and state court rooms.

Clearly, trial by jury must have been perceived to play a much more significant role in our nation's legal and political institutions at the time of the Founding than it does today. One explanation rests on the concept of popular sovereignty, of the right of the people to govern themselves, that I

introduced above. The jury was seen by early American colonists as much more than just a procedural body to judge the guilt or innocence of the accused. It was regarded as an important aspect of the people's expression of their Natural Right to govern.

The widespread belief in Natural Rights, Natural Law and popular sovereignty among early Americans found its theoretic roots in the philosophy of John Locke. Educated Americans were familiar with the Lockean tradition of government by consent or contract that can be found in his Second Treatise of Government. But what is often overlooked is the surprising influence of Locke's more philosophical work of epistemology, his Essay Concerning Human Understanding. In the Essay Locke rejected claims that knowledge must be based on innate ideas available only to Governmental and Ecclesiastic authorities. Instead, Locke argued that common men have the capability to reason reflectively and discover moral laws. Following Locke's empiricist lead, John Adams argued that "The General Rules of Law and common Regulations of Society were well enough know to the ordinary juror." [2]

Unlike in England, in America the common man was believed to know what was essential about the law without the aid of obfuscating, erudite, bewigged judges. And conformity to local, moral, religious and

political standards was enforced in colonial societies. Juries reflected, enforced and created those standards, and were thought to reflect the conscience of the community enhancing the belief that the people themselves knew what the law was for their own community.[3] As Jefferson so succinctly put it: "The great principles of right and wrong are legible to every reader; to pursue them requires not the aid of many counselors." [4] Jefferson believed that the common man could know the important moral truths of the Natural Law. In his words: "State a moral case to a plowman and a Professor, the former will decide it as well and often better than the latter because he has not been led astray by artificial rules." [5] Well, I'm a professor of philosophy and someone who grew up in a small farming community in Iowa. I've known countless professors including professors of ethics who seem to have been led astray by artificial rules. I couldn't agree with Jefferson more about the superior moral judgment of the common man.

Locke's epistemology of the common man provided the philosophic justification of the doctrine of popular sovereignty. And there was no political institution where this popular sovereignty was more commonly expressed than in the practice of juries. De Tocquville writes in Democracy in America "The jury is above all a political institution; it should be regarded

as one form of the sovereignty of the people; …The jury is part of the nation responsible for the execution of laws…"[6]. The very idea of popular sovereignty, the people's control over their government, undergirds the concept of the jury trial.

The importance of the jury was also supported by the fact that Americans found themselves unsure of the status and applicability of British law especially after the Revolution. Moreover, judges were often distrusted especially since colonial judges held their commissions without benefit of settled salaries and at the pleasure of the Crown. They were often political appointees who weren't trained in the law. It's not surprising that in many jurisdictions colonial juries would refuse to convict defendants when they thought the law was unjust even when the facts clearly indicated guilt. This was especially true with respect to prosecutions for smuggling. It got so bad that the British eliminated the defendant's right to trial by jury in all maritime cases in favor of the juryless Admiralty Courts. Thus, the colonial jury took on an all-important political role in the many grievances that would eventually lead to our independence. Jefferson expressed his commitment to the institution of trial by jury often. "Trial by jury … is the only anchor ever yet imagined by men in which a government can be held to the principles of its constitution."[7]

As Alexander Hamilton so clearly expressed it, in commenting on the disputes between, "the friends and adversaries" of the newly proposed Constitution…"if they agree in nothing else, [they] concur at least in the value they set upon trial by jury;…the latter regard it as **the very palladium of free government**." (Federalist 83).

Today's juries are viewed largely in terms of the rights of the individual parties involved. Jurors are seen as restricted to passively receiving the interpretation of the law from the judge and having only the reduced role of determining if the facts warrant convicting the accused as charged. The Founders conceived the jury as much more, especially as including the right of the people to reflect the moral conscience of the community by refusing to convict and punish those who were accused of violating unjust laws.

This right of jurors to judge " according to conscience" was explicit in the thinking and the words of the framers. And it is clear that this right was believed to extend not only to the jury's determination of the facts of the case but to include as well the jury's evaluation and interpretation of the law. This conception of the jury's role is confirmed by leading law dictionaries of the time and the first edition of Webster's Dictionary. Thus, the British

Jacob's Law Dictionary includes in its definition of 'jury' the following passage:

"Juries … 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."[8]

And Webster includes the following in its entry for 'jury':

"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…" [9]

The importance of the institution of trial by jury and the doctrine that the jury has the right not only to determine the facts of a case but to interpret, determine and evaluate the law was vociferously expressed by many of the Founders. Thus, Jefferson writes that the jury is an inestimable institution which "curbed judges and represented the people in the judicial branch" Should jurors believe such judges to be "under any bias whatever in any cause" they should "take on themselves to judge the law as well as the fact" of the case. [10] John Adams argued, "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." [11]

More importantly, in a rare jury trial conducted before the Supreme Court, in Georgia v. Brailsford (1794), Chief Justice John Jay after stating that in general juries decide the facts of a case while judges determine the law, instructed the jurors that "…you have nevertheless a right to take upon yourself to judge of both and to determine the law, as well as the fact in controversy." Thus, we have a Chief Justice early in our history not only espousing the doctrine of jury law determination as a right, but instructing a jury about that right.

The practice of instructing juries about their right to determine both fact and law was so entrenched that in People v. Callendar when Supreme Court Justice Samuel Chase failed to allow the defendant's attorney to address the jury on matters of the law, impeachment charges were brought against him. Justice Chase was accused of misconduct "In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact … and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the questions of law…involved in the verdict… "

Justice Chase survived the impeachment attempt but almost half the Senate voted to convict.[12]

And it was not only in federal court cases that the jury's right to determine the law was recognized. This right was even built into the repressive Sedition Law of 1798 that included the words: "the jury who shall try the cases shall have a right to determine the law and the fact." [13] Moreover, many state courts explicitly recognized this right and even adopted the jury's law determination right into their state constitutions. In 1841 the Supreme Court of Maine overturned a trial court's decision because "The presiding judge erred in determining that in criminal cases, the jurors are not the judges of the law as well as the facts."[14] Similar declarations were issued by the Supreme Courts of Vermont in 1829 and Illinois in 1827. [15] In 1879 the Supreme Court of Pennsylvania warned that "Judges may be partial and oppressive…and when a jury are satisfied of such prejudice, it is not only their right but their duty to interpose the shield of their protection to the accused."[16] The Georgia constitution of 1777 forbade judges from interfering with the jury's power to determine the law as did New Jersey by statute in 1784.[17]

More importantly, in 1851 Maryland and Indiana revised their state constitutions to explicitly guarantee jurors the right to judge the law. These

constitutional guarantees remain today. Thus, "„„for almost five decades after the Bill of Rights was ratified, the right of jurors to judge both law and fact was largely uncontroversially accepted."[18]

And there is ample evidence that both before and after the Revolution, juries did in fact implement this right that is commonly referred to as Jury Nullification. Actually, this term is problematic in that it suggests that that the jury is nullifying or negating the law which, of course, it has no power nor right to do. The statute or law itself remains on the books. Rather, Jury Nullification describes the right of juries to act in their role as conscience of the community to interpret or fail to apply the law in a particular case in the interests of justice. Jury Nullification involves the fundamental power of criminal trial juries to deliver a general verdict of either "guilty" or "not guilty' without having to justify their conclusion or rationale to anyone. And because of the Fifth Amendment's protection against double jeopardy, once the jury has acquitted the defendant, he cannot be required to stand trial for those charges again.

Jury Nullification has been recorded since the advent of trial by jury, at times with amusing consequences. As the former Republican Vice Presidential candidate, Sarah Palin, might put it: American juries can sometimes act "mavericky." One of former Supreme Court Justice Hugo

Black's favorite stories about mavericky juries involved a sharecropper who was charged with stealing his landlord's mule. The rich and demeaning landlord had few friends but the evidence against the sharecropper was so overwhelming he didn't even testify in his own defense and the jury took only five minutes to decide the case. The foreman handed the verdict to the clerk who read it out loud: "We the jury find the defendant not guilty, provided that he return the mule." The judge was furious: "There is no such verdict in the law. The defendant is either guilty or not guilty." And he ordered the jury to return with a lawful verdict. Five minutes later, they were back. The clerk announced their revised verdict: "We the jury find the defendant not guilty. He can keep the mule."

More seriously, juries did practice Jury Nullification especially with respect to the odious practice of applying the death penalty to literally scores of often trivial offenses. For example, the Governor of Virginia enacted a legal code that provided the death penalty for stealing grapes, killing chickens or trading with Indians. Typical was New York's Duke laws that included among capital offenses striking one's parent, denying the true God, pick-pocketing, worshipping idols, horse stealing, adultery, and homosexual sodomy. In 1813 South Carolina listed 165 capital crimes on its books. Needless to say, especially given the fact that juries often lived in sparsely

populated rural areas and may have known the accused or his family, even when the facts indicated guilt, juries refused to convict and send the defendant to his death.

Probably the most famous cases of juries refusing to deliver a verdict of guilt concerned the Fugitive Slave Act. Even before the Revolution, juries in Massachusetts had begun to award slaves their freedom. But Jury Nullification flourished as a result of the passage of what was probably the most vile legislation in our nation's history. In many states, acquittals under the Fugitive Slave Act were so commonplace that some federal judges began admonishing jurors not to vote their consciences, but to follow the law no matter how repugnant.[19] And we know that when juries were absent judges returned a high proportion of thousands of escaped slaves to bondage.[20] There is little doubt that the public's awareness of the right of juries to determine the law and apply it according to their conscience was heightened during this period.

However, even as early as the middle of the 19th century the belief in the jury's right to determine the law began to be shaken. The uniquely American era of the reign of the jury started to come under attack by courts and prosecutors at every level of government. While it waited well over one hundred years from our nation's founding, the Supreme Court finally took

up the issue in 1895 in Sparf et al v. the United States.[21] The case involved an appeal of the murder conviction of two sailors for killing the second mate on board a U.S. ship while at sea. The defense argued that the jury had been incorrectly instructed that nothing in the case justified their returning a verdict of manslaughter instead of murder which was a capital crime at the time. After consulting with the trial judge, the jurors' questions suggested that some of them thought a manslaughter verdict more merciful even though against the letter of the law as stated to them by the judge.

Justice Harlan writing for the majority of the Court in Sparf rejected the appeal and ruled that juries do not have the right to judge the law and, even more, never did have that right.[22] Moreover, on the very issue that had earlier in our history brought Justice Samuel Chase to impeachment, Harlan argued that the defense's counsel had no right to argue the law to the jury. Harlan admitted that the jurors had the legal power to bring in a verdict contrary to the court's instructions but not the right. This questionable distinction between the power to nullify and the right to nullify remains at the center of the controversy to this day. And the 5-to-4 decision in the 1895 case in Sparf shockingly remains the only time in our history that the Supreme Court has directly broached the issue of Jury Nullification.

Worse yet, subsequent state and federal courts have misapplied the rulings in Sparf and misused it in their campaign to end Jury Nullification. Because of its importance and because it has been used illegitimately by courts in their campaign against Jury Nullification, it is crucial to recognize how limited the holding in Sparf is. The case determined only that federal judges were not legally obligated to inform jurors of their power to come to a verdict based on their own judgment of the law. It in no way attempts to eliminate the power of juries to nullify nor even to limit federal judges from instructing juries of this power where they think it appropriate. Justice Harlan even explicitly acknowledged that in those states whose constitution provides for jury determination of the law, jurors would be considered judges of the law.. All that Sparf decided was that it was not reversible error for a judge to fail to inform the jury of their power to nullify.

Harlan's rejection of the jury's right to judge the law in Sparf should not be surprising. From its inception, judges and prosecutors have opposed Jury Nullification and jury powers in general. However, it seems inconceivable to me that the Founders would so carefully craft the powers of the jury embedded in the Constitution and Bill of Rights that clearly give juries Nullification power if they had not intended this power to be a right. And, as I have documented above, the Founders and early state and federal

courts including Supreme Court Justices constantly referred to the jury's Nullification power as a right. If one follows a conservative interpretative methodology of Judicial Review and argues that the meaning of a constitutional doctrine is to be found in the original intent of its authors, the conclusion is inescapable that there is a constitutional right of the jury to judge both the facts and the law.

This interpretation is supported by the Vermont Supreme Court which as late as 1849 disputed the alleged distinction between rights and power. In that case Justice Hall argued, "In my opinion, such power [to decide the law] is equivalent to right."…"[this power] may … be lawfully and rightfully exercised, in short, … such a power is equivalent to, or rather is itself, a legal right."[23] Hall continues claiming those in opposition fail to see… "the principal reason for the establishment…of this right of juries, - the preservation of the liberty of the citizen and the protection of innocence against the consequences of the partiality and undue bias of judges…"[24]

Moreover, even if one argues it's not the jury's right to nullify, it is at least the defendant's right to have a jury that has knowledge of its power to nullify. This would mean any judicial instructions designed to deny the jury knowledge of its power would violate the defendant's constitutional rights. And in U.S. v. Fielding, the Court explicitly stated that the defendant has a

right to a jury with this power.[25] As other courts have indicated, if the defendant has a right to a chance of acquittal even though contrary to law, the jury should be told about their power to acquit or the defendant's right is denied.[26]

Most importantly, the Founder's conception of the jury as reflecting the moral conscience of their community requires that they have the right and the power to nullify. This fits well with an essential element of the philosophical justification of the criminal law that was propounded by the legal philosopher H.L.A. Hart. He concluded that "what distinguishes a criminal from a civil sanction…is the judgment of the community condemnation which accompanies and justifies its imposition."[27] The jury must not convict unless it can in good conscience judge that the defendant's act is morally condemned by the community. But this cannot be possible unless the jury is instructed about its constitutional role of meeting out justice according to the standards of the moral conscience of the community.

I believe the best argument against the attempt by the Court in Sparf to distinguish between the jury's right and power to nullify was given by Pennsylvania Chief Justice Sharswood in a case in 1879. In his words "…The distinction between power and right, whatever may be its value in

ethics, in law is very shadowy and unsubstantial. He who has legal power to do anything has the legal right."

Despite the limited scope of the ruling in Sparf, despite its logically problematic distinction between the jury's power versus its right to nullify, one thing is perfectly clear: the judicial system is engaged in an almost obsessive campaign to eliminate Jury Nullification. "No state or federal appellate court in decades has held that a trial judge is even permitted…to explicitly instruct jurors on their undisputed power to return a verdict of not guilty in the interests of justice."[28] And this even extends to the states whose constitutions or laws provide for jury determination of the law. Nor can the defense even offer evidence whose relevance concerns only the justice of a verdict.[29]

The judicial war against Nullification even extends to obfuscation. In a case before the 6th Circuit in 1988 the jury sent a note to the judge asking about Jury Nullification. The judge wrote back that there is no such thing as valid Jury Nullification and falsely told them that they would violate their oath and the law if they nullified.[30] Note the double standard. The judiciary is denying the jury its right to reflect the conscience of the community and bring justice into the courtroom while at the same time permitting prosecutors to urge juries to act as the "conscience of the community" to use

their guilty verdict to "send a message" to the community that crime will not be tolerated.

Worse yet, the war on Nullification has at times led to judges removing jurors who have knowledge of their nullifying power, or interfering with jury deliberations in their investigation of potential nullifiers, and even removing likely nullifiers from the jury. It has even resulted in the prosecution of advocates of Jury Nullification. In People v Kriho in 1999, Laura Kriho was tried and convicted of contempt of court for her failure to volunteer answers to questions not specifically asked of her during voir dire. She had attempted to convince her fellow jurors to nullify in a methamphetamine possession case.[31] In a case in Idaho, Carol Asher, a former nun, reportedly claimed during jury deliberations that she could not agree to convict because she answered to a higher power than the judge. Apparently, the judge disagreed with her comparative evaluation since he charged her with perjury for violating her oath as a juror. Although the charges were eventually dismissed, Asher spent over $16,000 on legal fees.[32]

In 2002 a California Court of Appeals shockingly upheld a judge's admonishment to a jury that it had a legal obligation to apply the law. This charge incorrectly suggests to the jury that they could be subject to punishment if they did not follow his instructions.[33] Another case, United

States v. Rosenthal, is typical of the judiciary's efforts to remove potential nullifiers. Rosenthal was arrested for growing marijuana in his home in accordance with California law which permits growing the plant for one's own medical use contrary to federal law. To prevent Jury Nullification the federal court removed 19 jurors who expressed support for medical marijuana. Note that this results in effect in the federal government nullifying California state law as well as preventing the defendant from having a jury that is representative of his community and that could express the conscience of their community in jury deliberations.

Studies suggest that approximately 90% of contemporary Americans are unaware of the power of juries to nullify. Of course, given the erudition of the members of the Literary Club, most of you were probably familiar with Jury Nullification. But for those of you who are just learning about the jury's power to nullify, I'm afraid that the judiciary's campaign against Nullification might apply to you. You now know of this constitutionally guaranteed power. But this knowledge may very well lead to your being disqualified during voir dire in any case where the prosecution might suspect the possibility of the jury using its power.

I'm sure some of you are wondering why I have ignored many of the classic arguments against informing the jury about it power to nullify, that it

would lead to lawlessness or even anarchy, that it would have the consequence of verdicts being random and unpredictable or that it violates the jurors' oath. The first of these arguments can be answered succinctly by pointing out that the judicial system functioned without major problems over the approximately one hundred years during which juries were informed that they had a right to determine the law and to rule according to their conscience. As to the juror's oath, most oaths are silent on the issue of the juror's duties with respect to the judge's instructions and, in any event, no oath could waive the constitutional guarantee of the power of the jury to acquit for reasons of justice.

I've also ignored speculation concerning why the judiciary has turned against Nullification and the century-long practice of informing juries of their right to nullify. Some suspect that in our early history juries were largely homogeneous groups of white, male, Protestant freeholders. As our nation encountered waves of immigrants from countries outside of Northern Europe and of diverse religious identities and especially as African-Americans were given the legal right to sit on juries, the jury no longer resembled the judiciary. This is especially the case as the law became regarded as a profession with strict entrance barriers and as the numbers of lawyers grew exponentially. Michael Foucault might point out the obvious

consequences of the rise of such a well organized, entrenched bureaucracy. And of course, there has always been a struggle between the power of the jury and the power of the courts and the legal establishment.

Sadly, I think we've lost something in our near abandonment of trial by jury in favor of plea bargaining and in the system's attack on the jury's power to render a verdict according to the conscience of the community. Lord chief Justice Matthew Hale said it best as far back as 1665: "…it is the conscience of the jury that must pronounce the prisoner guilty or not guilty." The facts are the facts; the law is the law. Granted. But conscience, the basic obligation of the jury, involves much more; it requires justice. When jurors are misled into reaching a verdict without being aware of their constitutional power to acquit for reasons of justice, trial by jury is not performing the magnificent function Madison, Adams, Jay, Jefferson and Hamilton intended it to perform.[34] If juries are to serve as the conscience of the community, they must be properly instructed that it is permissible for them to bring their conscience into the courtroom. America needs to return to the Founders' conception of the jury as the ultimate check on government and judicial oppression, the ultimate expression of the conscience of the people, the very palladium of free government.

Partial Bibliography (See Footnotes for further references.)

Amar, Akhil Reed and Hirsch, Alan, For the People: What the Constitution Really Says About Your Rights, The Free Press, NY, London, Toronto, Sydney, Singapore, 1998.

Adams, John, The Works of John Adams, ed. C.F. Adams. Boston: Little Brown (1850-1856).

Bergh, Albert Ellery, The Writings of Thomas Jefferson Vol. 1, (Washington, 1907).

Boyd, Julian, ed. The Papers of Thomas Jefferson Vol. XV. Princeton, 1950.

Conrad, Clay S., Jury Nullification: The Evolution of a Doctrine, Carolina Academic Press, Durham, North Carolina, 1998.

De Toqueville, Alexis, Democracy in America, J.P. Meyer and Max Lerner, eds. Harper and Row,1966.

Duane, James Joseph, "Jury Nullification: The Top Secret Constitutional Right", Litigation, Summer 1996.

Dyere, William L., In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles and Future in American Democracy, Thomas Dunne Books, St. Martin's Press, New York, 2002.

Hart, H., "The Aims of the Criminal Law", 23 Law and Contemporary Problems, Summer, 1958.

Scheflin, Alan W., "Jury Nullification: The Right to Say No", 45 Southern California Law Review, 168 (1972).

Scheflin, Alan W. and Jon Van Dyke, "Jury Nullification: The Contours of a Controversy", 43 Law and Contemporary Problems, 51 1979-1980.

Stimson, Shannon C., The American Revolution in the Law: Anglo-American Jurisprudence before John Marshall, Princeton University Press, Princeton, New Jersey, 1990.

Wroth, Kin V. and Hiller B. Zobel, eds. The Legal Papers of John Adams. Cambridge, Mass., 1965.

---

[1] Amar, p.55.
[2] Worth and Zobel, pp.230-231.
[3] Stimson, p.58.
[4] Boyd, p.134.
[5] Letter to Thomas Law, 1814.
[6] De Toqueville, p.273a
[7] Boyd, p. 269. (Letter from Jefferson to Thomas Paine, 11 July 1789).
[8] Jacob's Law Dictionary (1782).
[9] Noah Webster's Dictionary of the English Language (1t ed., 1828).
[10] Bergh, p. 73f.
[11] Adams, pp.253-255.
[12] Amar, p.98.
[13] Scheflin and Van Dyke, p.58.
[14] 18, Maine 346, 348 (1841).
[15] State v. Wilkinson, 2 Vermont 480 (1829).
[16] 89 Pennsylvania 522, 527 (1879).
[17] Stimson, p.60.
[18] Conrad, p. 60.
[19] Conrad, p.82f.
[20] Dwyer, p.74.
[21] Sparf v. U.S. 156 U.S. (1895).
[22] Ibid. p,101f.
[23]23 Vermont 14 (1849) p.47.
[24] Ibid. p.21.
[25] (Scheflin, p.218.
[26] Ibid. p.219.
[27] Hart, p. 401.
[28] Duane, p.7.
[29] U.S. v. Griggs, 50 F.3d 17, 1995, WL 7669 (9th Circuit 1994).
[30] U.S. v. Krzyske, 836 F.2d 1013, 1021 (6th Circuit 1988.)
[31] 996 P.2d 158, 163f. Colorado Court of Appeals, 1999. (The case was appealed, then remanded but the DA eventually dismissed the charges.)
[32] Washburn, p. 11.
[33] Ibid. p.11.
[34] Conrad, p.303.