

is in the case before them; and not to decide whether a statute of the United States produced to them, is a law or not, or whether it is void, under an opinion that it is unconstitutional, that is, contrary to the Constitution of the United States. I admit that the jury are to compare the statute with the facts proved, and then to decide whether the acts done are prohibited by the law; and whether they amount to the offense described in the indictment. This power the jury necessarily possesses, in order to enable them to decide on the guilt or innocence of the person accused. It is one thing to decide what the law is, on the facts proved, and another and a very different thing, to determine that the statute produced is no law. To decide what the law is on the facts, is an admission that the law exists. If there be no law in the case, there can be no comparison between it and the facts; and it is unnecessary to establish facts before it is ascertained that there is a law to punish the commission of them.

The existence of the law is a previous inquiry, and the inquiry into facts is altogether unnecessary, if there is no law to which the facts can apply. By this right to decide what the law is in any case arising under the statute, I cannot conceive that a right is given to the petit jury to determine whether the statute (under which they claim this right) is constitutional or not. To determine the validity of the statute, the Constitution of the United States must necessarily be resorted to and considered, and its provisions inquired into. It must be determined whether the statute alleged to be void, because contrary to the Constitution, is prohibited by it expressly, or by necessary implication. Was it ever intended, by the framers of the Constitution, or by the people of America, that it should ever be submitted to the examination of a jury, to decide what restrictions are expressly or impliedly imposed by it on the national legislature? I cannot possibly believe that Congress intended, by the statute, to grant a right to a petit jury to declare a statute void. The man who maintains this position must have a most contemptible opinion of the understanding of that body; but I believe the defect lies with himself.