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“Tort Reform” Threats to Democracy in America

On the anniversary of America’s shot at government without tyranny, *We The People* are troubled about what money is doing to *Democracy in America*.

As legislative and executive offices are bought and sold like commodities, the judiciary is the last branch of American government that cannot be bought lock, stock and barrel. Yet, at the behest of big business, the other two branches of government are busily sawing away at this third leg of government in the name of “tort reform.”

Uncorruptables

British attempts to impose new Stamp Act taxes in 1765 sparked a violent rebellion not only against “taxation without representation” but also because accused Stamp Act smugglers would be tried in non-jury courts. The Brits tried an end run around juries, knowing that a jury of peers was unlikely to punish colonists for evading an externally imposed tax law.

In a famous case 30 years earlier, a colonial jury flatly ignored a judge’s guidance and acquitted newspaperman John Peter Zenger of seditious libel charges. Those independent jurors set a precedent that holds today: you can’t be convicted of libel for writing the truth. Juries continued to foil tyranny in post-Independence America. In the 1850 Fugitive Slave Act, Congress found it necessary to deprive runaway slaves of the right to a jury trial, since juries too often refused to treat people as property.

The judiciary is a “double security” against the corrupt influence of money in politics because those who would corrupt the system must buy off both the judge and

a jury of ordinary Americans. “It would be necessary to corrupt both court and jury,” Alexander Hamilton wrote in *The Federalist Papers*. “For where the jury have gone evidently wrong, the court will generally grant a new trial, and it would be in most cases of little use to practice [corruption] upon the jury unless the court could be likewise gained.”

Such history explains why the founders of Texas and the United States literally fought for the right to jury trials. Both the U.S. and Texas Declarations of Independence invoke this right; and both Constitutions extend this right to criminal and civil cases. In contrast, Mexico’s unenviable legal system does not provide a jury’s hedge against corruption. In a telling effort to win over rebellious Texans, the last Constitution of the Mexican State of Coahuila and Texas provided for a gradual introduction of a jury system. Today, the Constitutional right to a jury trial in Texas is broader than that of almost every other state.

Hanging juries

The jury hedge against corruption serves everyone except those who buy influence. The biggest buyer of political influence in Texas is Texans for Lawsuit Reform. TLR gave more money to Texas politicians in the last election cycle than any other political action committee. This money did not come from the average Texans that populate juries. Almost half of this cash came from the families of just 18 Texas tycoons, including Dallas corporate raider Harold Simmons, a repeat offender of Federal Election Commission laws. Accustomed to throwing their political weight around and getting their

way, the tycoons are infuriated by one surviving legacy of the American Revolution. If they harm the poorest Texan, they can be sued for damages before a jury of ordinary Texans who are not for sale.

Because these tycoons cannot corrupt whole juries of ordinary Texans, they are using the more corruptible legislative and executive branches as a back door. The tycoons’ “tort reform” counterrevolution is chipping away at the independent, democratic powers of civil juries and at the access of average Texans to jury justice. In recent years, the Governor and Legislature have passed laws that sharply curtail:

- The ability of poor and middle class Texans to hire attorneys on a contract basis;
- The amount of “exemplary damage” penalties that juries can impose on the most grossly negligent and destructive individuals and corporations; and
- The ability of juries to hold the health industry and manufacturers responsible for medical malpractice or unsafe products.

The founders understood the value of letting the people lead better than many current legislators. Civil juries are a crucial part of a corruption-resistant government “of the people, by the people and for the people.” The U.S. and Texas have fought revolutions for the right to jury trials. Legislators should think twice before tying the hands of our citizen juries. Because liberty imposes attendant responsibilities, citizens must purge those Legislators who put the interests of the “tort reform” tycoons above the rights of the rest of us.

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