

# The State of Justice

## Trial by Jury: “Under Attack”

*Today, Americans’ fundamental right to trial by jury is under attack. Corporate special interests are trying to limit our access to our court system.*

*This is being done two ways—they are either forcing individuals to sign restrictive contracts or arbitration agreements to give up their right to a trial by jury when a dispute arises that would otherwise subject a corporate wrongdoer to the civil justice system, or, by advocating artificial “limits” that bind the hands of our juries through so-called “tort reforms” that significantly limit what juries are allowed to do.*

*It is good to reflect on the heritage of this right, which has been compiled by Beth A. White, Executive Director of the West Virginia Trial Lawyers Association, and which “Fact Sheet,” is re-printed here with her permission, and WVTLA. The title of the “Fact-Sheet,” and*

*introductory paragraph contain minor modifications to fit the format of The Blackstone Club Commentaries.*

### A Tradition of Nearly 800 Years

Trial by jury was first guaranteed in 1215 in the Magna Carta—the “great charter” of liberties between King John and the people of England, which protected their civil rights as citizens. It states, “No free man shall be taken, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land” (Chapter 39).

■ “The trial by jury ever has been, and I trust ever will be, looked upon as the glory of English law,” Sir William Blackstone, *Commentaries on the*

*Laws of England*—a jurist and professor whose interpretation of English common law was so important to our U. S. Constitution and Bill of Rights that his sculpture is on the wall of the House Chamber in the U.S. Capitol.

### Promoted As a Cause of Liberty

In the mid-1700s, the British began to use the courts to repress calls for independence by people in the Ameri-

can colonies. One of the first privileges the colonists lost was right to trial by jury in many places—although it had been guaranteed to British subjects since the Magna Carta. As a result, the right to trial by jury is mentioned in many of the great documents of the Revolutionary Era—including the Declaration of Independence.

■ “Trial by jury [is] the inherent and invaluable right of every British subject in these colonies,” Resolu-

tion of the Stamp Act Congress, October 19, 1765

■ Colonists are entitled to “the great and estimable privilege of being tried by their

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

**President Thomas Jefferson**

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peers in the vicinage,” Declarations and Resolves, First Continental Congress, 1774.

■ The denial of “the accustomed and inestimable privilege of trial by jury, in cases of both life and property,” was listed as grounds for the Revolutionary War in the Declaration of Causes and Necessity of Taking Up Arms, 1775.

■ Great Britain “depriving us, in many cases, the benefits of trial by jury” was listed among the charges against King George III in the Declaration of Independence (1776)—a right for which our founding fathers pledged “[their] lives, [their] fortunes] and [their] Sacred Honor.”

## Protected in Our Earliest State Constitutions

“The ancient trial by jury is preferable to any other and ought to be held sacred,” George Mason, 1776 Constitution of Virginia, on which the U.S. Constitution is based.

■ “[I]n all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable,” Constitution of North Carolina (1776).

■ Similar language appears in the constitutions for Pennsylvania (1776), Vermont (1777), Massachusetts (1780) and New Hampshire (1784).

## Preserved in Our Bill of Rights

The U. S. Constitution, drafted in 1787, included a provision which guaranteed the right to a jury trial in criminal cases, but excluded that same right for civil cases because the law varied too much from one state to another. This failure nearly defeated the Constitution and its ratification by the states.

■ “Trial by jury is the best appendage of freedom. Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. I hope we shall never be induced by

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such arguments, to part with that excellent mode of trial,” Patrick Henry, 1788, Virginia Constitutional Convention.

■ “I consider [trial by jury] as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution,” Thomas Jefferson.

In 1791, the United States Congress issued the Bill of Rights, the first ten amendments to the Constitution, which secured the rights and privileges of Americans—including the right to a trial by jury in civil court.

“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, according to the rules of the common law.”

## 7<sup>th</sup> Amendment

Today, the United States is one of only two countries in the world that guarantees their citizens the right to a civil jury trial. 