

Technology and the Rule of Law

Drones, medical help via Smart phones, self-driving cars, medical marijuana and the web watchers invading every element of privacy we have left. What is this world coming to? Perhaps more importantly, what is the role of the law in protecting citizens?

Until the 1960s, the law was primarily the creature of the rich and powerful. If a person was even 1% negligent, they could not bring a claim against somebody who was 99% negligent. This was called the “contributory negligence” standard. Serious claims were thrown out against railroads and other employers under the industry-friendly “fellow servant rule.” Workers’ compensation programs, which are a form of no-fault insurance, were created primarily because of the harsh working environment faced by American employees.

For a period of time between the late ‘60s and perhaps into the ‘90s, the legal landscape began to change. The law looked as though it would begin to protect the weak and the powerless. However, all of that changed thanks to an unprecedented industry effort to paint injured, innocent consumers and workers as low-lives and Cretans interested only in enriching themselves in a kind of lottery system. Stories were told, most of which were totally untrue, of people going to the court system to get something for nothing. Lies about the McDonalds spilled coffee case permeated the press. The truth about that claim and the so-called “loss of psychic powers case” were ignored in the smoking and mirrors created by those who have an interest in making sure the legal system helps only the commercial world.

The courts have not been innocent either. The arcane, costly, and, at times, torturous legal system simply became too slow and too expensive. Even though heroic strides have been made by judges and court systems to professionalize the handling of litigation, the citizen is still left with a bad taste in their mouth.

People used to be proud to perform jury service. Now it is considered dull, time consuming and expensive. Many employers will not pay an employee who is on jury duty. Therefore many jurors show up angry and do not perform their function as effectively as they might otherwise.

Some lawyers have behaved badly and, like the medical profession, we have not done a great job in disciplining our own bad actors. While lawyer discipline has improved over the years, it still has a long way to go.

New technologies only enhance the risks faced by consumers, workers and others. Will lawyers and the legal system be there to protect the innocent and injured, or will there be another obstacle? Already, there is legislative protection for internet companies, including web engines like Google. Virtually every contract a consumer signs has an arbitration agreement in it which cuts out the legal system, creating an industry-friendly forum that grants little or no

relief. Exposés have been done on the vanishing jury trial, ensconced in the Seventh Amendment to the United States Constitution, and today virtually forgotten about.

The Supreme Court has ruled repeatedly that the Federal Arbitration Act creeps into virtually every transaction, regardless of how local. The Act is said to favor arbitration, even where it is predispute. In other words, when consumers open up a stock brokerage account, buy a cell phone or an automobile, they agree to waive legal rights that were once guaranteed by the Constitution of the United States. Most contracts signed by consumers contain miniscule lettering on page 14 from which the purchaser waives the right to trial by jury and consequential damages. An industry-friendly and expensive arbitration system may grant a refund, but typically realistic damages do not exist in this alternative universe. As the old song goes, “you don’t know what you’ve got till it’s gone.”

We are now in the throws of a mean-spirited presidential election. No one will speak in an informed manner about the legal system and the Seventh Amendment right to trial by jury in civil cases. Both conservatives and liberals should favor a strong legal system. We do not need more government agencies or more bureaucrats. We do need more private attorneys general. We need well-trained and respected attorneys to advocate for the rights of consumers and employees. Government regulation and tens of thousands of pages of regulations are no substitute for the right of the innocent and injured to have their day in court. There is a bill pending currently in Congress to permit victims of 911 to sue Saudi Arabia in U.S. Courts for that country’s role in financing the 911 terrorist attacks. Congress is willing to come to the assistance of certain classes of people, to guarantee them their right to trial by jury, but unfortunately not to the average consumer. This is not to say that the congressional legislation on Saudi Arabia is a bad thing. Simply stated, the courts exist to adjudicate grievances and any other system has failed to assure that one person can go up against the mighty and powerful before a jury of their peers.

Our Founders were highly motivated to reject the English imperial system of dispensing justice. It is for that reason that the Ten Amendments to the United States Constitution guarantee the right to remediation in the courts when serious and significant rights are at issue. Fortunately, judges have the tools at their disposal today to get rid of frivolous cases prior to trial and to punish lawyers who do not play fairly.

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