

Liberty Tree

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Plunder and Foul Play UNCHECKED!

The unconstitutional perversion of justice for vaccine makers

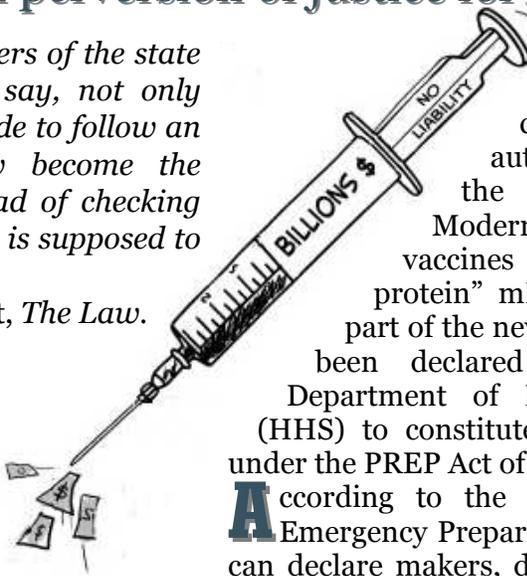
The law perverted! And the police powers of the state perverted along with it! The law, I say, not only turned from its proper purpose but made to follow an entirely contrary purpose! The law become the weapon of every kind of greed! Instead of checking crime, the law itself guilty of the evils it is supposed to punish!

— Frédéric Bastiat, *The Law*.

“Social justice warriors” are known for chanting “no justice, no peace,” in reality a mob threat to commit mayhem if “authorities” do not do as they demand. Yet even as the mob chants, we are reminded of the deep desire of men everywhere for true justice. Indeed, the reason governments are established at all is to ensure justice.

Justice — that is, preserving individuals’ life, liberty and property against whoever would harm them — is sought among men through the establishment of systems of investigating, arresting, adjudicating, and punishing evil-doers. Written laws as well as judicial traditions prescribe the *manner* in which justice may be administered. In America, the highest written law is the Constitution, and the judicial and legal traditions underpinning that law are the common law, an inherited system of justice from England.

In America today, however, justice is “turned away backward,” and truth has “fallen in the street,” (see Isaiah 59:14) and this is



extremely evident considering the current COVID circus and the deadly vaccines authorized for emergency use by the FDA. The Pfizer-BioNTech, Moderna, and Johnson & Johnson vaccines — all involving lethal “spike protein” mRNA or DNA claimed to be a part of the never-isolated coronavirus — have been declared by the Secretary of the Department of Health and Human Services (HHS) to constitute *emergency countermeasures* under the PREP Act of 2005 (as amended).¹

According to the PREP (Public Readiness and Emergency Preparedness) Act, the HHS Secretary can declare makers, designers, distributors, etc. of a declared countermeasure *immune* from tort liability for all damages caused by said countermeasures (whether vaccines, drugs, or other products) in the case of declared pandemics or epidemics. What recourse does an injured person have, or what compensation can his family receive, if he dies? Under PREPA, claimants can only apply for public compensation for injuries or death from the declared vaccines within a year of being administered the vaccine.² But only damages over and above the amounts *already paid* for injuries or disability by State, federal or local governmental entities, insurance carriers, employers, or any other third parties under either a provision of law or a contractual agreement will be compensated.

The PREP Act makes a mockery of the Constitution. Congress has no power to pass or enforce laws related to public health for the States, no power to delegate law-making power to the executive branch, no power to declare some persons immune from liability in the

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1. The PREPA is codified at 42 U.S.C. §§ 247d-6d and 247d-6e. The declaration can be found at Federal Register, Vol. 85, No. 52, p. 15201 (March 17, 2020)
2. 42 U.S.C. §247d-6e(b) and 42 U.S.C. § 239c(b), § 239d(c).

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courts, and no power to bar the people's right to a trial before a jury for damages. Yet the PREP Act purports to do all those things, and also to "preempt" any State laws to the contrary! To date, however, this "law" has not been challenged in the U.S. courts.

Immunizing the 'immunizers'

Congress has relieved vaccine makers from liability before. In 1986, the National Childhood Vaccine Injury Act, 100 Stat. 3755, 42 U.S.C. § 300aa-1 *et seq.*, forbade most suits against vaccine makers for injury or death, and set up a separate compensation system through an adjunct-type non-Article III court. Compensation for victims is funded by an excise tax on vaccines — currently about 75 cents per disease alleged to be prevented. For example, every MMR shot is taxed 2.25 frns to pay for this public 'benefit' to the injured.³

The justification for the Vaccine Act was "to stabilize a vaccine market adversely affected by an increase in vaccine-related tort litigation and to facilitate compensation to claimants who found pursuing legitimate vaccine inflicted injuries too costly and difficult." *Bruesewitz v. Wyeth*, 562 U.S. 223 (2011).

"Special masters" in the Court of Federal Claims hear vaccine related complaints, which must generally be filed within three years of the claimed vaccine injury, and claims are adjudicated informally within strict time limits, then subject to judicial review in the Court of Appeals for the Federal Circuit. That court has established a petitioner's burden of proof as (1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and

effect showing that the vaccination was the reason for the injury; and (3) the showing of a proximate temporal relationship between vaccination and injury (*i.e.*, that the injury occurred after vaccination and within a short time frame after vaccination). The Court stated that this burden of proof, *which is lower than that necessary in a civil court case*, is "to allow the finding of causation in a field bereft of complete and direct proof of how vaccines affect the human body." *Althen v. Sec'y of Health & Human Servs.*, 418 F.3d 1274, 1280 (Fed. Cir. 2005).⁴

If, as the Court recognized, the scientific field of vaccines is *bereft* of direct proof of how vaccines affect the human body, then how can any scientist, manufacturer, physician or propagandist confidently assert that vaccines are safe for the human body, or are effective in preventing illness in the human body?

Despite this reality, Congress decided in 1986 that since pharma companies were threatening to pull out of the vaccine market because of lawsuits over injuries (which they were losing), the social benefit of promoting vaccination was sufficient to immunize manufacturers of vaccines and to force the people who get vaccines (the ultimate payers of the tax) to shoulder the damages for any adverse reactions!⁵ In the "vaccine court" created by Congress, vaccine manufacturers do not need to appear or defend themselves. Big Pharma, reaping all the profits, pays no damages or litigation costs for blood-poisoning its victims, because they cannot be held accountable for any product liability unless it can be shown that they deliberately mislabeled their vaccine or failed to warn about side effects. If an injured person chooses to sue in State courts rather than apply for the federal benefit, these limitations still apply.

The Vaccine Act states, at 42 U.S.C. § 300aa-22 (b)(1), that "[n]o vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine related injury or death associated with the administration of a vaccine ... if the injury or death resulted from side-effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warning." The Supreme Court has held that this means the Act preempts all design-defect claims from being brought in federal courts, and specifically, that this law also preempts all such claims from being brought in State courts. In other words, the Vaccine Act is federal law which removes jurisdiction over these types of product liability actions from State courts.

To date, the research has not revealed any time the

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3. 26 U.S.C. §§ 4131 and 4132.

4. See Holland, Mary *et al.* "Unanswered Questions from the Vaccine Injury Compensation Program: A Review of Compensated Cases of Vaccine-Induced Brain Injury," *Pace Environmental Law Review*, Vol. 28, Issue 2, Winter 2011, an enlightening demonstration of the autism-related cases which have been compensated.

5. Only manufacturers for the vaccine types recommended and listed by the CDC for "routine" administration to children and pregnant women, however.

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Court addressed any constitutional challenge to the Vaccine Act.

Constitutionally infirm

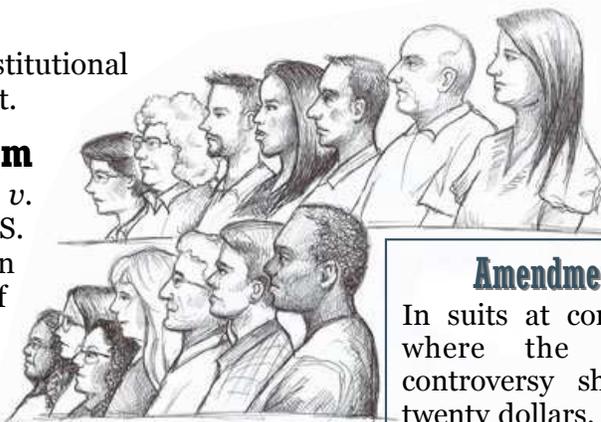
Remember *Jacobson v. Massachusetts*, 197 U.S. 11⁶ In 1905, Justice Harlan stated that matters of public health were among the police powers reserved to the States under the U.S. Constitution. Whether a public health threat exists, or the population is to be ‘protected’ by vaccination, is up to States to decide. No enumerated power set forth under Article I of the Constitution allows Congress to make laws which directly or indirectly concern public health matters, including limiting the liability of persons who provide health-related measures or treatments of any kind.

Since *Jacobson*, no amendments to the U.S. Constitution have surrendered this State power to Congress. Yet the Vaccine Act clearly established a federal ‘vaccine court’ and limits State court jurisdiction over vaccine manufacturers’ torts against their people, a matter related to the public health. The PREP Act is even worse, allowing damage claims to be brought only before an obscure HHS office.

No enumerated power allows Congress to make laws limiting certain persons’ or corporations’ liability in the Courts, either. Instead, Art. I, Sec. 9, Cl. 8 states that “No Title of Nobility shall be granted by the United States.” In England, titles of nobility came with certain privileges, among them the privilege of being judged in Court only by a jury consisting of other nobles (peers of the peerage!).⁷ In America, all persons are to be equally judged before a jury of the people, and yet Congress has set up a nobility-like privilege for manufacturers of certain vaccines — they don’t have to appear in court at all. When petitioners bring their case against the U.S. Government instead, paid government attorneys do all the litigation work. No power can be found in the Constitution, however, for Congress to substitute the executive branch of the U.S. government for any non-governmental party in tort claims, or to shoulder and pay the tort liability of any non-governmental party.

Non-reviewable law-making power?

The PREP Act goes *much further* than the Vaccine Act in shielding manufacturers of declared counter-measures. Under the PREP Act, “a covered person [all manufacturers, administrators, and distributors of the COVID-19 vaccines] shall be immune from suit and liability under Federal and State law with respect



to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure [COVID-19 vaccine].” 42 U.S.C. § 247d-6d(a)(1).

Amendment VII

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 reexamined in any court of the United States, than according to the rules of the common law.

Since the Secretary of HHS has declared that COVID-19 vaccines are subject to liability protection because of the declared COVID pandemic, the PREP Act provides that with respect to those vaccines, “no State or political subdivision of a State may establish, enforce, or continue in effect ... any provision of law or legal requirement

that ... is different from, or is in conflict with [the PREP Act], and relates to the design, development, clinical testing or investigation, formulation, manufacture, distribution, sale, donation, purchase, marketing, promotion, packaging, labeling, licensing, use, *any other aspect of safety or efficacy*, or the prescribing, dispensing, or administration by qualified persons of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure.” *Id.*, at (b)(3)(C)(8) (“Preemption of State Law”).

The “sole exception to immunity from suit and liability” of covered persons is stated by PREPA as when “death or serious physical injury [is] proximately caused by willful misconduct.” Willful misconduct is defined as an act or omission taken “intentionally to achieve a wrongful purpose,” “knowingly without legal or factual justification,” and in disregard of a “known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.” *Id.*, at (c)(1)(A). Congress has further violated the Constitution by delegating its plenary power to make all laws to the Secretary of HHS, who is allegedly authorized, in consultation with the Attorney General, to “promulgate regulations ... that further *restrict* the scope of actions or omissions by a covered person that may qualify as ‘willful misconduct.’” If that isn’t enough to protect the vaccine manufacturers and all their minions, then they can rely on the provision that no act or omission can be considered ‘willful misconduct’ for anything subject to FDA regulation *unless* the HHS Secretary or the Attorney General has first initiated an enforcement action with respect to such act or omission. *Id.*, at (c)(5)(A). Thus, as former Senator Ted Kennedy once noted, it is “essentially impossible”

6. See *Liberty Tree*, August and September 2020.

7. See, e.g., en.wikipedia.org/wiki/Privilege_of_peerage

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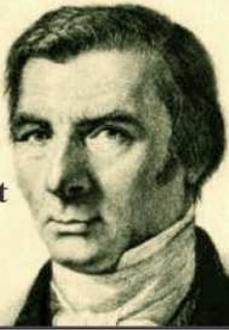
for injured parties to sue in court for damages.⁸

Instead, any one of the thousands now injured by the COVID-19 ‘vaccines’ may only obtain a benefit for any damages not reimbursed by other legal benefits or private insurance if they file a claim within one year of receiving the vaccine with the Health Resources and Services Administration (HRSA). Once the Secretary has made a determination on the claim, “no judicial review of the Secretary’s actions concerning eligibility and benefits determinations ... is permitted,” states 42 CFR § 110.92, citing 42 U.S.C. § 247d-6e(b). Indeed, under that cite, Congress has stated that “[n]o court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary [in determining eligibility and benefits].”

In sum, if a person accepts any COVID vaccine into their arm, and they are injured or die, neither they nor their surviving kin will ever be able to sue for damages in a court of law for any design or manufacturing defects, and the facts will never be decided by any civil jury, except in the unlikely event that the Attorney General or the HHS Secretary brings criminal action or suit for willful misconduct in federal court.

It should be clear that in the PREP Act, Congress established an unaccountable new HHS emperor who may simply declare a pandemic or epidemic, and then reign supreme over all actions taken to counteract said pandemic. This emperor may make laws unreviewable by any court, and may establish privileges for a favored class of manufacturers. Those privileges include plundering the coffers of the people to profit from making vaccines which can kill, with hardly any fear that they shall ever be held accountable for any harm they cause human beings. This legalized plunder and killing is wrapped in the moral ‘justification’ that a deadly virus exists and the government and the vaccine nobility will save lives from this imaginary threat. Even if a pandemic existed, the PREP Act is still breathtakingly seditious. Congress has overturned the Constitution by delegating nonreviewable law-making power to an appointed executive branch member.

When plunder becomes a way of life for a group of men living together in society, they create for themselves, in the course of time, a legal system that authorizes it and a moral code that glorifies it
Frederic Bastiat



Civil trials guaranteed for damages

As an integral part of any system of justice, trial by jury is one of the most important checks on despotism and tyranny. In the first version of the Seventh Amendment proposed by James Madison in 1789, trial by jury was described as “one of the best securities to the rights of the people” which “ought to remain inviolate.”⁹ Joseph Story, Supreme Court justice from 1812-1845, wrote that the Seventh

Amendment “places upon the high ground of constitutional right the inestimable privilege of a trial by jury in *civil cases*, a privilege scarcely inferior to that in criminal cases, *which is conceded by all to be essential to political and civil liberty.*”¹⁰

The Seventh Amendment guarantees that all suits at common law, for damages

exceeding 20 dollars, are triable by a jury. The U.S. Supreme Court has held that the English common law of 1791, the year the Seventh Amendment was adopted, governs the constitutional analysis of this guaranteed right. In other words, where a jury trial right existed in England in 1791, it will exist for federal trials.¹¹ In England at that time, the courts of law determined *claims with damages*, and juries decided the facts for all damage claims. The courts of equity, by contrast, determined claims concerning specific performance of or injunction against a party (or government official), and the facts in such cases were decided by judges. In England, Parliament may change the jurisdiction of juries, but Congress has never been granted such power by the Constitution, and has of course never had any power to change the Seventh Amendment by legislation.

By passing the PREP Act, Congress barred citizens from obtaining in federal courts, and ostensibly in State courts, any ability to sue for claims for damages against vaccine manufacturers, distributors, and administrators who have been declared immune by virtue of a pandemic. In so doing, Congress violated the Seventh Amendment, which provides that all claims for damages be heard, not in obscure HHS offices, but by a jury.

As Lysander Spooner once observed, trial by jury is a “trial by the country,’ that is, by the people as distinguished from a trial by the government.”¹² It is only such a trial that can provide a check against the ravages of government. In the PREP Act, Congress has enthroned vaccine manufacturer cronies, sitting in government, as judge and jury of all claims against those manufacturers.

Can any doubt that the PREP Act is a thinly disguised license to plunder and kill?



8. en.wikipedia.org/wiki/Public_Readiness_and_Emergency_Preparedness_Act

9. 1 Annals of Congress 436 (1789).

10. J. Story, *Commentaries on the Constitution of the United States* (1833), p. 1762.

11. See, e.g., *Dimick v. Schiedt*, 293 US 474, 476 (1935); *United States v. Wonson*, 28 F. Cas. 745, 750 (D. Mass. 1812).

12. Spooner, Lysander. *An Essay on the Trial by Jury*.