

The Takeaway

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The Hidden Tax of Jury Service

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Not all taxes are conveniently labeled as such. For example, consider jury duty. Although it is seldom discussed in these terms, jury duty clearly fits the textbook definition of a tax—jurors are required to surrender a valuable asset (their time) to the government with little or no personal benefit. In the colorful words of former budget director Richard Darman, “if it looks like a duck, walks like a duck and quacks like a duck, it’s a duck.”

As a tax, jury duty has a number of undesirable features. First, although all Americans share equally in the benefits of an effective legal system, the obligations of jury duty are not equally distributed among

them. Whole classes of capable individuals are excused from service because of their age or occupation,¹ and the burdens of service vary dramatically according to the state and county of residence (see chart).



WHAT’S THE TAKEAWAY?

Jury duty is a tax that is unnecessarily high.

Increased transparency would give judges an incentive to conserve juror time.

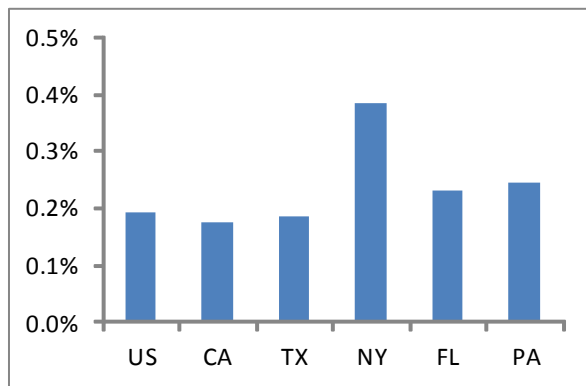
Juror pay should be raised to something approaching a market wage.

Jury fees for civil trials should reflect the real cost of hiring the jury and should rise as the length of the trial increases.

For example, New Yorkers are more than twice as likely as Californians to serve jury duty in a US district court. If you live in New York City, you are more than twice as likely to serve on a jury than if you live in Buffalo or just outside the city in Westchester.²

Some workers are insured against the costs of jury duty because their firms continue to pay them while they serve, but other workers must bear the full burden themselves. Furthermore, in states where the jury pool is drawn primarily from lists of registered voters, jury duty is a tax on voting that discourages public participation in the political process.³

Figure 1: The Likelihood of Paying the Jury Tax (Federal jurors as a share of the voting-age population—2012)



Source: United States Courts: Judicial Business 2012, Statistical Tables—US District Courts—Grand and Petit Juror; and the United States Census Bureau

Perhaps the most unattractive feature of the jury duty tax, however, is that it is unnecessarily high. In fact, the jury system seems almost designed to squander juror time. Jurors twiddle their thumbs in the jury room while the judge resolves a sticky legal issue for another trial or indulges the attorneys in yet another sidebar discussion. Artificially low fees for jury trials encourage litigants to opt for a

trial before a jury rather than a judge. Time-honored administrative procedures prolong jury service and increase the number of jurors required for each trial.

From the perspective of the courthouse, jurors are practically free.

The system does not conserve juror time for one simple reason—from the perspective of the courthouse, jurors are practically free. Thus, the key to lowering the tax burden of jury duty is changing the perspective of the courts regarding juror costs. If the consumers of juries (the judges, lawyers, and litigants) were responsible for the real costs of juror time, then they would have every incentive to use it as sparingly as possible.

JUROR CONSCRIPTION

Eliminating juror conscription and replacing it with a voluntary system wherein jurors are paid a market wage would make the courts directly responsible for the costs of juror time and would resolve many of the tax-incidence problems associated with the current system of jury duty. Unfortunately, the resulting juries would not represent a cross-section of the community and, therefore, would not fit the traditional definition of a “jury of one’s peers.” If we want to retain this feature of the legal system, juror conscription is probably unavoidable. However, there are a number of ways to induce a court system based on jury

duty to behave more like a system based on voluntary jurors.

REFLECTING REAL COSTS

One strategy is to raise juror pay to something approaching a market wage. Currently, every state and federal court pays jurors less than the minimum wage.⁴ Paying jurors more realistic wages would increase the fairness of the jury system and force the courts to more fully acknowledge the value of the services they receive from jurors. From the court's perspective, the price of a typical jury's time would be approximately equal to the price expected under a voluntary system. Thus, the courts would face nearly the same incentive to conserve juror time (on average) and less juror time would be wasted.

Another strategy is to provide judges with direct incentives to conserve juror time. Of all the officers of the court, judges are in the best position to respond to such incentives because they have legal authority to set reasonable time limits for cases in their courts. Furthermore, the National Center for State Courts found that variations in trial length arise primarily from the personal habits of judges and attorneys rather than from the nature of the cases or the evidence.⁵ Therefore, incentives aimed at judges are likely to be particularly effective.

Putting judges on a juror budget would be an obvious way to achieve this objective, but it is not the only one. Publishing detailed records on their jury utilization would also give judges an incentive to conserve juror time. Not only would publication bring social pressure to bear on judicial spendthrifts (particularly in states where judges are elected), but it would

also give judges a benchmark against which to measure their jury efficiency. We know that providing physicians with information about the treatment practices of their peers causes them to reduce unnecessary treatments.⁶ By the same logic, providing judges with information about the jury practices of their peers should help them to reduce unnecessary jury time. At the very least, publishing information on jury utilization would eliminate the stealth dimension of the jury duty tax and advance the attractive principle of no taxation without documentation.

PUBLIC VERSUS PRIVATE INTERESTS

An equally important strategy for reducing the jury duty tax is to make civil litigants fully responsible for the additional costs of a jury trial. Unlike criminal trials, which serve primarily the public interest, civil trials serve primarily the private interests of the parties involved. Therefore, it is hard to argue that the public should subsidize private litigation by keeping jury fees artificially low. Rather than being nominal and fixed (for example, civil litigants who request a jury trial in a Texas county court pay a jury fee of \$30), jury fees for civil trials should reflect the effective cost of hiring the jury and should rise as the length of the trial increases. To discourage excessive use of juries, litigants should be charged market wages for juror time even if the jurors themselves are essentially unpaid.

Incentives aimed at judges are likely to be particularly effective.

It is tempting to also require that the loser in any civil trial pays all of the associated jury costs. After all, an experiment in Florida's state courts suggests that a loser-pays system of civil litigation reduces the number of trials.⁷ However, the loser-pays system could also encourage greater legal expenditures for cases that do go to trial. Therefore, a loser-pays requirement could lead to fewer but longer civil cases. Because the net effect on juror time is unclear, it is probably best to leave the distribution of jury costs to the discretion of the judge.

CONCLUSIONS

Jury duty is a tax that is unnecessarily high. As long as the court system considers jurors a free good, it will remain unnecessarily high. Fortunately, a few simple reforms can raise the price of jurors from the court's perspective and, thereby, use market forces to cut the tax.

Duck hunting anyone?

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Notes

¹ For example, citizens over age 70, students, and primary caretakers of young children and invalids are automatically exempt from jury duty in Texas. While persons eligible for exemption may voluntarily serve on juries in Texas, voluntary service cannot be considered a tax.

² Second Annual Report Pursuant to Section 528 of the Judiciary Law 2011–2012. Retrieved from https://www.nycourts.gov/publications/pdfs/528Report2011_12.pdf

³ Preller, A (2012). Jury duty is a poll tax: The case for severing the link between voter registration and jury service. *Columbia Journal of Law and Social Problems*, Fall, 46(1). <http://www.columbia.edu/cu/jlsp/pdf/Fall2012/Preller.pdf>

⁴ The National Center for State Courts. Jury Management database.

⁵ Sipes, D., et al. (1988). *On trial: The length of civil and criminal trials*. National Center for State Courts.

⁶ Keller, R., Soule, D., Wennberg, J., and Hanley, D. (1990). Dealing with geographic variations in the use of hospitals. *The Journal of Bone and Joint Surgery*, 72(9), pp. 1286-93.

⁷ Gryphon, M. (2011). Assessing the effects of a 'loser pays' rule on the American legal system: An economic analysis and proposal for reform. *Rutgers Journal of Law and Public Policy*, 8(3), pp. 567-613.

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