

Epilogue

Solutions for a Politicized Judiciary

Government and organized crime aren't that different. The idea is to get something for your group at the expense of people who aren't in it. The Jewish holocaust can be cast as not only racism, but a planned transfer of wealth. You kill the person you've cheated to remove his voice. Andrew Jackson did it with the Cherokee Indians after gold was found in Georgia. No one is innocent.

Politics is defined as competition for resources under conditions of scarcity. It's common for judiciaries to be politicized, especially in states where judges are elected. However, when the legal system charged with keeping your group together is politicized, it will discriminate in favor of itself at the expense of the people it's designed to protect. You will no longer have a national consensus. There will be higher priority people in the interest group and those outside. No one will trust government or the law and the "belief in belief" necessary to common endeavor will disappear. The country will subdivide into small interest groups and entities able to provide income for their constituents.

When the failures of Ohio find a willing participant among the banal and soggy residents of Washington state, we have to acknowledge that the mentality of our legal system has deteriorated on a national scale. Our jurisprudence of individual rights is being replaced with pragmatism and income strategies.

Good people and bad people use the same rules; their intent differs. The presumption of legitimacy is being used by those in charge of legal administrations to behave dishonestly. Ohio has brought us to a point where it's possible to say that those who practice American Constitutional culture are a threat to the legal system because a culture of jurisprudence curtails individual license and income.

What to Do?

There are several things which can be done to improve state judiciaries.

First, they must be depoliticized. The states which choose judges by election only have the most gruesome record of judicial misconduct. See Ohio, Texas, Pennsylvania and Washington. Judges will favor parties who contribute to their campaigns. Adam Liptak of The NY Times did an article on Ohio Supreme Court J. Terence O'Donnell. He rules in favor of his contributors 91% of the time.

Second, judges must be rotated from jurisdiction to jurisdiction every 1-2 years. When judges sit in one location for a generation (elected judges tend to stay in office for as long as they want) they make preferred relations with local prosecutors, police, city administrators, attorneys and the district courts in the area. Moving judges from venue to venue makes extra-legal working arrangements difficult.

Third, Judges must be subject to public hearings prior to final elections. Those judges who survive a primary election, or who are submitted for appointment by a state procedure, must be scrutinized in public hearings where lay and professional testimony will be offered. These hearing would be announced in advance and anyone who wanted to testify in them would be scheduled at the hearing.

Fourth, judges must be subject to ongoing review every two years by a federal commission. It's bad enough that people choose judges without a sufficient data base, but the problem of job performance hasn't been sufficiently solved. Judge performance should be monitored during his/her time in office. All attorneys should be compelled to fill out short, multiple choice forms after a litigation is complete. The forms would include criteria such as knowledge of the law, impartiality, behavior towards litigants, evidence of psychiatric or cognitive disorder, evidence of substance abuse, ability to apply the law and work ethic. These forms would be collected and scored.

If a judge had below a certain score, he would be subject to a review committee. These forms and review committee proceedings would be public. The schedule of proceedings would be publicly announced, a month in advance, by internet and local printed media in an accessible location.

If a judge was found to be lacking in a particular area, he would be subject to sanctions/corrective remedies such as 1) continuing education in a particular area, 2) admonishment/warning, 3) probation for a period of 6 months to a year,

4) suspension (ranging from one day to several months), 5) removal from office, 6) referral to criminal justice system.

These results would be published within one week of a determination. Review determinations must be made within 30 days of a public hearing.

As stated above, judge review must be done by a body relatively independent of state and local politics. I suggest more federal involvement.

Fifth, Federal Judges should not be seated in the Federal District in which they were seated as state judges. All the partisan relations a judge makes while he's developing his career at the local and county level are carried to the Federal appointment. You end up with all the local biases and political alliances taking place in a different building in the same city or county....just on a higher and more destructive level.