

JUSTICE[®]

Monthly Journal of American Justice Foundation[®]

© 2016 by American Justice Foundation[®] ... ALL RIGHTS RESERVED



Who or What Controls the Courts?

Our lives are controlled by legislatures, agencies of the executive branches, and the courts that have power over the first two.

But, who (or what) has power over the courts?

Most people would say, "The Constitution" ... but that is only partially correct. The U.S. Constitution and the various state constitutions create and give power to the courts, and that power includes the power to invalidate legislative acts (state legislatures or U.S. Congress) and power to declare unconstitutional any and all proceedings in any agency of the executive branches (including state governors and their agencies as well as the President of the United States and all executive branches under the president.

That's a lot of power.

In fact, it is power about which very few people are aware.

Our state and federal governments operate by virtue of three separate and (supposedly) independent branches: legislative, executive, and judicial.

Yet, of those three branches, the judicial (courts) has greater power than the other two!

So, who (or what) has power over the courts?

Does Any Person or Group of Persons Control the Courts?

You may think the People, collectively, have power over the courts, but we don't.

There is absolutely nothing (at present) that we, individually or as a collective of individuals, can do to overturn any final decision of any court. A decision is "final" if it is reached by a trial level judge and is not appealed or if the trial judge's decision is taken up on appeal to a higher court where a final appellate opinion is reached.

Once a decision is final it is *final*.

Decisions of trial judges can and are frequently challenged in courts of appeal (state and federal), and decisions of state appellate courts are sometimes appealed to a state supreme court or decisions of state appellate courts or U.S. Courts of Appeal may (under special circumstances) be taken to up on appeal to the U.S. Supreme Court for its final decision.

But, once a final decision is reached, and no further appeal is made or possible, that's the end of the line.

That's where the buck stops.

Your life and lives of everyone you know are governed accordingly.

Once a decision is final, the courts have "spoken" ... and we people have no recourse to reverse or amend final judicial decisions.

Can't the President Veto the Courts?

Nope!

The President of the United States can veto acts of Congress, and the governor of any of our states can veto acts of state legislatures, but no president or governor can overrule a final court decision!

Surprised?

We the people can elect a new president or governor who may be able to appoint some judges or appellate justices in the future, but that can in no way change what lawyers call "*stare decisis*", i.e., an issue or principle of law that has been decided with finality.

The Latin means, literally, "to stand by things decided".

The courts themselves are bound (within certain limits explained later below) to "follow precedent", to abide by previous decisions.

Nobody can veto the courts!

Not any state governor nor even the President of the United States.

The real power of government, you see, is not in the hands of the President or Congress or any state governor or legislature.

The ultimate power of government is in the hands of judges alone!

And, that power is absolute!

Doesn't the U.S. Constitution Control the Courts?

That's a nice idea.

It was the plan of those wise people who started our government on July 4th, 1776 ... and it worked pretty well for a while (so long as judges stuck to the rules explained later in this issue).

But, in the early part of the 20th Century, the wisdom of the past fell victim to fear of what the future threatened.¹

Courts, legislatures, executives and their agencies, indeed most of Earth's population was terrified by the horror of World War I. The rising spectre of modern death technology took 17 million lives in Europe's blood-stained fields in the space of barely four years of armed conflict. That is almost the entire population of New York State today! Mechanized weapons, airplanes, lethal gas. Death by technology that would grow by leaps and bounds in future years.

As never before, humanity saw the need for a legal philosophy that would foster peace between nations.

Wisdom cried in the streets, "Never again let slip the dogs of war!"

Though President Wilson's plan for a "just peace" failed when the United States refused to join the League of Nations to foster global communications to prevent future conflict, the evident need for a collective global system of law was all too clearly seen.

Legal scholarship fell in the grip of a new idea: *the collective good*.

This concept swept the halls of law schools and, since judges are all graduates of such institutions, it enmeshed itself in judicial thinking and increasingly inflected judicial decisions.

Clarence Carson wrote of this in his *World in the Grip of an Idea*, warning of the consequence that following this old familiar path would bring, the idea that puts the supposed needs of the collective ahead of the rights of individuals.

Few even imagined what was happening behind the scenes in the classrooms of our law schools. The time-worn errors crept in so stealthily and, in the wake of war that shook the entire world, it all seemed "the right thing to do".

But, it was *not* the constitutional thing to do!

Like the great error, "The ends justify the means," this new idea insidiously appealed to the minds of legal scholars who are, after all, the architects of every civilization. The collective good required, as they saw it, a purposeful shift away from outworn legal ideas, a more liberal stance that (for the sake of what they called "public policy") must circumvent the seemingly stiff restraint imposed on judges by strict interpretation.

This shift broke one of the foundations of constitutional law, as is explained later herein.

Then, upon the scene of this shifting legal thought, World War II broke out, slaughtering an estimated 60 million people, nearly 3% of the planet's entire population, ending in two flashes of light by which another 200 thousand died from man's latest invention, the atomic bomb.

Seven years later an isolated atoll in the Pacific was vaporized by a device utilizing the same source of energy that powers our sun.

The collective was now in imminent peril of human extermination.

Public policy pushed individual rights and the time-worn rules of legal reasoning aside.

¹ "Where fear is present, wisdom cannot be." Lactantius, 300 A.D.

JUSTICE[®]

Aren't We Better Off?

That depends on how one views the world today.

The United States houses more prisoners than any other nation on the planet. Our rate of inmate incarceration is nearly five times that of any other country. More than two million are behind bars here.

The gap between those with immense wealth and those who work two or more jobs to keep food on the table widens at an alarming rate. According to the New York Times, the wealth of our top 10% increases, while the bottom 90% "get less and less of the pie each year." The top one-tenth percent has more than the entire bottom 90%, and the gap continues to widen as our courts continue in the decision-making that threatens to cause total economic collapse and further inflame the anger of those determined to change the *status quo* by means of open rebellion and violence in our streets.

The education gap between rich and poor expands exponentially.

Tax incentives and other benefits granted by our legislative bodies and approved by our courts give immense advantages to the giant businesses that crowd out "the little guy". The legal barriers to the start-up entrepreneur in most fields are insurmountable, so nearly every restaurant, hardware store, movie theatre, clothier, or place to buy a pair of shoes or stick of gum is run by a giant corporation, not "mom and pop" as it was before lawyers changed our world by breaking the rules explained below.

In 1958 polls reported 73% of Americans trusted government. By 2014 that trust level had fallen to only 24%.

About half the people believe the U.S. Constitution should be taken to mean what it says, while the other half believe it should be taken to mean whatever it needs to mean to meet demands of modern views of life, liberty, and the pursuit of happiness.

And, so it goes.

And with it the future of your children.

Are courts "controlled" by constitutions state or federal? Not if one takes a close look recommended by American Justice Foundation[®]. Not if one actually *reads* the published opinions of today's courts and compares them with judicial decisions made prior to 1900!

What Changed?

Legal education!

You and your children were taught *nothing* of the rules that should control judges.

More to the point, today's law students aren't taught, either!

Those rules get in the way of the plans of social engineers who sit on the benches of our courts to "interpret" constitutions and laws created by our state and federal legislatures.

Before our law schools adopted the "ends justify the means" and "public policy trumps individual rights" philosophies, there existed a set of rules that were, back then, as much the law as constitutions.

They were the Rules of Juridical Reasoning that kept judges in line.

With no knowledge of those rules (or a proclivity for ignoring them when they get in the way of "public policy") judges write decisions that favor the collective, corrupt public morality, ignore tradition, and continue to move us closer to the Brave New World vision of Big Brother that Huxley wrote about.

As Pike wisely wrote soon after the Civil War, "The blind Force of the people is a Force that must be economized, and also managed, as the blind Force of steam, lifting ponderous iron arms and turning large wheels, is made to bore and rifle the cannon and to weave the most delicate lace." He went on to write, "The Force must have a brain and a law." His work and that of many others of his age built a framework for government, a geometry if you will, by which people may be benefitted by the rule of right and justice.

That geometry is lost.

It must be found again and made to do its work of truth and love!

We must teach the geometry of law to our children.

The Geometry

Mankind in general, and judges in particular, have a vital penchant for thinking they are wiser than those who've gone before them. In our race to build a "better world" we tend to ignore the lessons of the past. We cast off the fetters of tradition as worn out ideas of dead people who cannot possibly understand the world we live in today.

Yet the geometry remains, no matter how much we ignore it.

Truth remains truth ... no matter what fools believe to the contrary.

The blind Force of the people needs law, and law needs geometry, a set of rules to guide it systematically. When the geometry of law is ignored, as it is in our courts today, the fulcrum on which those famous scales of justice rest is shifted. What's "right" is lost in the arrogance that says, "What's law is right!"

To keep the fulcrum centered, wise legal thinkers long before our time created rules to control judges. Some are called maxims of common law, those self-evident truths Jefferson hinted at in our Declaration of Independence but did not explain in detail.

A nation run by judges no longer restricted by the rules of legal reasoning is like a ship run by a navigator who lost his compass.

As Sir William Blackstone lectured at Oxford from 1753-1756 and later published in outlines and commentaries, "The reason ceasing, the law itself ceases." His work formed a large part of the initial framework for our nation's early legal system. He admonished the legal community of his day to avoid the ever-present tendency to vary from the rules of reason that *should* guide every judge in every decision great or small.

Earlier was mentioned the rule of *stare decisis* that tells judges to stand by things decided. That one is ignored today, except when it favors what judges wish to be the outcome of a case. Yet it is the very root of common law.

There are many others.

For example, "The proof lies on him who asserts a fact, not on him who denies it." This rule is routinely violated when a judge seeks to reach an independent (and therefore unjust) decision.

"A thing similar is never exactly the same." This rule, obvious to any thinking person, is frequently violated in court, where judges allow litigants to argue facts clearly contrary to its inviolable truth.

Then there is the rule that ordinary words should be given ordinary meaning, not twisted or "interpreted" contrary to common sense, yet judges ignore this rule when it favors the outcome they desire.

The "same kind" rule requires judges to interpret language of laws that does not expand the law beyond its meaning. Thus a law that forbids "rifles, shotguns, pistols, and other weapons" requires that the judge not interpret "weapons" to include knives, since knives are not of the "same kind" as rifles, shotguns, and pistols. Again, if a judge wishes to convict a person under the same law when only a knife was involved, the rule will be ignored.

There are many more that room here does not allow. Those are to be part of the public legal education American Justice Foundation[®] proposes.

Conclusion

The law and how it works in reality is not what most people think.

Most judges are honest and kind, intending to administer the law with restraint and reason.

However, the rules of restraint and reason not being taught today in our law schools (and, of course, not at all in our public schools), so judges do not see the geometry and are therefore pretty much on their own to reach such decisions as, to them, seem just.

This is a danger that needs revision at the soonest opportunity.

As Blackstone concluded, "Wretched is the land where the law is either uncertain or unknown."

#