P.S. to the NEWS
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## END LIFE TENURE FOR JUDGES

Is there a better way to curb judicial arrogance than by constitutional amendments to overturn obnoxious decisions or by limiting the jurisdiction of the federal courts? Perhaps we should eliminate the life tenure of federal judges and devise mechanisms other than impeachment for the removal of misbehaving judges.

This constructive suggestion was made recently by Jules Gerard, professor of constitutional law at Washington University in St. Louis. At a scholarly seminar in Washington, D.C., on the future of the American family, Gerard presented a paper entitled "Shielding the Family from Governmental Intrusion" which recommended such a change through a revision of Article III of the Constitution.

The problem is what to do about the "imperial judiciary" -- the activist federal judges who have no respect for the restraints that are supposed to limit their power. After some judges are appointed, they think they have been annointed. According to Gerard, "the disease seems to be contagious and epidemic."

Although the Constitution assigns "all" federal legislative power to the Congress, and reserves to the states and the people all powers not delegated to the federal government, the federal courts have presumed to legislate in a wide range of areas in which they have no proper authority or competence. These areas include abortion, busing, crime, pornography, elections, school prayer, and internal security.

The greatness of our American system of constitutional government is that it is based on a unique and ingenious system of interlacing checks and balances. Laws are passed by a majority of both Houses of Congress, but can be vetoed by the President, but can be effectively repassed by a two-thirds majority of both Houses. Similar balancing mechanisms exist for treaties, appointments, constitutional amendments, etc.

But where are the checks on judicial usurpation? Where are the institutional balances? Judges can be impeached, but that mechanism is a political impracticality.

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Gerard suggests that judicial appointments be for a limited time. Appointments to the Supreme Court would be valid only until the first or second presidential election next after the one following appointment. Thereafter, the justice would be on the ballot at the presidential election in the form "shall he be retained?"

Judges of the circuit and district courts of the District of Columbia would also be subject to nationwide referenda. Judges of other circuit and district courts would be on the ballot in the areas covered by their respective courts.

Any judge who failed to be retained would be disqualified from holding federal judicial office. Of course, a method would need to be devised to assure that not all of the judges of any multi-judge court would be on the ballot at the same election.

Another recommendation Gerard puts forth for discussion would provide for the removal of any judge censured by two-thirds of both Houses of Congress, a short-form impeachment. There could also be some mechanism to discipline (short of removal) imcompetent, lazy, abusive, or other misbehaving judges.

No doubt it will be argued that such a proposal, if adopted, would deprive the federal courts of their independence. But the constitutional role of the judiciary should not mean freedom from any restraint. Justice William Douglas served on the Supreme Court for 36 years, the length of nine presidential terms.

No state grants lifetime tenure to its judges. As Gerard points out, "there is no evidence that state judges [who must be elected] are less able to withstand improper pressures, or more likely to sell their souls to the devil, than federal judges."

The abuse of power by federal judges with lifetime tenure grows more intolerable with each month. One of the most irrational was the holding that parents may not be given a voice in their unmarried, minor daughter's decision to seek an abortion. Most recently, a federal court even ruled that we may not draft an army to defend our nation unless we draft young women along with men.

The trouble with constitutional amendments to overturn bad court rulings is that they imply that the decisions were legitimate exercises of judicial authority. They were not. Federal judges should not be in a privileged sanctuary where they alone, of all public officials, do not have to answer for abusing their power.

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