1990

Introduction - Federal Courts Symposium

Richard A. Posner

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I am proud to bear some, although only modest, responsibility for the genesis of these remarkable articles on federal jurisdiction. In December 1988, Chief Justice Rehnquist appointed the members of the Federal Courts Study Committee, which Congress had authorized be created to conduct a comprehensive study of the problems of the federal courts. I was one of the members appointed. Our Chairman, Judge Joseph Weis of the Third Circuit, asked me to head up the Committee's subcommittee on the relationship between the Article III courts and other decision-making bodies, judicial and nonjudicial, state and federal. I asked Professor Larry Kramer of the University of Chicago Law School to be the subcommittee's Reporter. Because the Committee was under a tight deadline—it was to submit its final report by April 1, 1990 (later changed to April 2, to head off the inevitable jokes about April Fool's Day)—and had very little in the way of a budget, Professor Kramer and I issued a plea for help from academic and other experts on the various topics, within the overall scope of the subcommittee, that we were interested in pursuing. The response was magnificent. The law professors and other lawyers to whom we turned were not only willing to drop everything—on short notice and without remuneration—in order to conduct the studies that we needed, but many of them were able to produce in record time the work of academic quality that appears in the following pages.

The work published here has permanent value, whatever the fate of the recommendations made by the Federal Courts Study Committee. Yet it is worth emphasizing that the Committee itself has not regarded this work as some body of decorative bagatelles, grace notes to the Committee's recommendations. To a great extent the recommendations made by the subcommittee and adopted by the full Committee have been shaped by the

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studies that are published here. Although neither I nor the Committee as a whole have been persuaded by everything in these studies, a comparison between the studies and the recommendations in the Committee's final report will reveal the great influence of the former upon the latter.

The studies speak for themselves and it would serve no purpose for me to try to summarize them here, but I would like to say another word about the relationship between the studies and the need, which begot them, for reform of the federal courts.

Law is on the whole a conservative institution and as a result judicial systems tend to change slowly, incrementally. But the last thirty years have witnessed an extraordinarily rapid growth in judicial caseloads, particularly in the federal courts, and has brought about a situation of incipient crisis that threatens to overwhelm the efforts at piecemeal court reform that have accompanied (but never anticipated) this surge in cases. More than additional patchwork is needed; bold new thinking and action are needed. There is no shortage of bold thinking, as the studies published in this issue attest. Bold action is something else. The politics of judicial reform are depressing in the extreme. The benefits of such reform are highly diffuse: the beneficiaries of expert, expeditious, and inexpensive adjudication are scattered and, to a large extent, unidentified, and as a result do not constitute a cohesive, effective political pressure group. The opponents of judicial reform however, include a number of groups (within the bar, within the judiciary, within the executive branch of government) who are heavily invested in the maintenance of the status quo and as a result have strong incentives to bring pressure to bear against change.

It may take a long time for the movement for federal judicial reform to gather sufficient momentum to overcome the vested interests and special interests that oppose it. The studies published in this issue will not only contribute to that momentum, but also generate further scholarly study and analysis that are the prerequisites of wise and durable reform.