Institutional Independence of the Third Branch

Utah Supreme Court Chief Justice Christine Durham

It is common to hear discussions about the “independence of the judiciary” framed in terms of the ability of judges to decide cases free from improper political or other influences. What is less commonly understood, but is equally important, is something called “institutional independence” - the right of the judiciary to govern itself as a co-equal branch of government. This requires the ability to establish and implement the priorities that belong peculiarly to the judiciary, like access to justice, prompt resolution of disputes, proper use of and accountability for public resources, alternatives to litigation, and a whole host of other concerns that are part of the administration of the courts. Institutional independence requires not only adequate resources in terms of funding, but also a high degree of control within the judicial branch over the efficient use of those resources, with a co-extensive obligation to be open and accountable to the public.

Utah’s courts enjoy a remarkable degree of institutional independence. With the 1985 revisions of the judicial article of the Utah Constitution, the judicial branch was vested with the tools for self-governance. In the nearly 30 years since that constitutional change, Utah’s courts have developed a highly effective system of self-governance and administration. We have been able in that time to consolidate the trial courts (permitting more efficient use of judicial time), achieve state funding for the courts, centralize administration, and much more. Because of these changes, we have been able to accomplish numerous court reforms and greatly improve our service to the public.

The most significant feature of the judiciary’s governance system in Utah is the Utah Judicial Council, a body created by the constitution and vested with the power to administer the state courts. The Council’s composition is governed by statute and is designed to provide representation from each of the different types of court within the state: the Supreme Court, the Court of Appeals, the District (general jurisdiction) Courts, the Juvenile Courts, and the Justice Courts (city and county courts). Although each elected member of the Council brings the expertise and perspective of his or her court level, each is expected to undertake the governance of the entire judiciary statewide, and to establish priorities for the system as a whole. The Council is the rule-making body for all administrative rules regarding the operation of the courts, and supervises the judiciary’s budget. The Chief Justice of the Utah Supreme Court (who is elected by the members of the court) serves as Chair of the Council and is effectively the CEO of the judicial branch. The Council depends on the work of its own standing committees, numerous special committees and task forces, and the boards of judges for each court level for advice and consultation.

Utah’s Judicial Council is one of only two such constitutionally created councils in the United States. In most states, the governance of the courts belongs to the chief justice, the state’s high court, or some combination of the former and multiple levels of autonomous trial court control. These systems do not permit the high degree of coordination of services, effective policy setting, and fiscal accountability that our system does. In Utah, the judiciary is truly able to “speak with one voice” on matters of administrative policy and budget issues. This capacity has been invaluable in permitting us to work on such concerns as support for self-represented litigants, alternative dispute resolution, problem-solving courts, efficient case management in the trial courts, weighted caseload information that permits accurate resource needs assessments, delay reduction, educational and professional development for court staff and judges, and good customer service, to name only some aspects of the ongoing work of the judicial branch.

The budget preparation process of the courts is perhaps the most straightforward example of how well Utah’s governance systems serves the courts. The first step in each year’s budget process involves trial court administrators and judges in each judicial district of the state reviewing their operations and plans, and identifying resource needs. The results of their work then go to the court level boards, where judges from all over the state, selected by their peers, review the requests from each district. The boards do some additional assessment and prioritize the district requests. The boards’ recommendations are then forwarded to the Judicial Council. In addition to the recommendations from the boards of judges, the Council hears from all of the administrative departments of the courts (such as information technology, education, mediation, public outreach, etc.) about their budgetary needs. The Council then devotes a multi-day meeting to examining all the needs and requests, comparing them with our strategic
goals and fundamental mission. At the end of that process, the Council approves a final budget which becomes the base of our annual request to the legislature for funding appropriations. This makes it possible for us to “speak with a single voice” to the executive and legislative branches about our policies and priorities. Once our budget has been funded, we have considerable autonomy in the use of our funds, a power which has been absolutely essential to our ability to deal with budget cuts during the current economic downturn.

Another arena in which our system of governance permits us great flexibility and credibility is in communications with the other branches of government. While the judiciary takes no position on the substance of legislation, we can and do review all legislative proposals for their impact on the courts, and the Council and its staff communicate regularly with legislators and legislative staff. Likewise, there are numerous ways in which the judiciary works closely with the Governor and executive agencies. All of that work and communication is overseen by the Council and the policies it sets, avoiding confusion and mixed messages.

Decisional and institutional independence are critically related. Threats to the institutional independence of the state courts often come from the backlash that can follow unpopular decisions. Both forms of independence are absolutely necessary for the proper functioning of courts as the third branch of government, and the guardians of the rights of the people and the rule of law. While we should be accountable only to the law and the constitution in our judicial decisions, we must be accountable to the entire community for the way in which we do our business and use public resources. Utah’s courts are structurally and functionally very well-positioned for such accountability and transparency. We believe that our ability to speak with a single voice on the administration of the courts serves the citizens of Utah well.