INEQUALITY OF JUSTICE

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The American tradition of electing, rather than appointing, minor public officials has its most serious features in regard to the judiciary branch of the government. Judges, prosecuting attorneys, minor court officials, sheriffs, the chiefs of police, and in smaller communities sometimes the entire police force, are either elected for limited terms or are dependent for their offices upon political representatives of this uncertain tenure. In some places, they can even be recalled during their terms of office, though this is comparatively rare.

The immediate dependence of court and police officials upon popular election—that is, upon local public opinion and political machines—instead of upon appointment strictly according to merit and the uncertainty of tenure implied in this system naturally decreases the attractiveness of these important positions to many of the best persons who would otherwise be available. Professional standards are thus kept lower than those which could be attained under another system. The courts do not get the cream of the legal profession. The social prestige of judges in local courts is not as supreme as could be wished. Corruption and undue political influences are not absent even from the courtrooms. These facts themselves have the circular effect of keeping the best men from judicial positions.

But apart from such general effects, the fact that the administration of justice is dependent upon the local voters is likely to imply discrimination against an unpopular minority group, particularly when this group is disfranchised as Negroes are in the South. The elected judge knows that

sooner or later he must come back to the polls and that a decision running
counter to local opinion may cost him his position. He may be conscious
of it or not, but this control of his future career must tend to increase his
difficulties in keeping aloof local prejudices and emotions. Of course, the
judge's attitudes are also formed by conditions prevalent in his local com-
community, but he has a degree of acquaintance with the law and with public
and legal opinion outside his community. This would tend to emancipate
him from local opinion, were it not for his direct dependence on it. 3

The dependence of the judge on local prejudices strikes at the very root
of orderly government. It results in the danger of breaking down the law in
its primary function of protecting the minority against the majority, the
individual against society, indeed democracy itself against the danger of
its nullifying in practice the settled principles of law and impartiality of
justice. This danger is higher in the problem regions where there is acute
race friction and in rural areas where the population is small and provincial
and where personal contacts are direct. Under the same influences as
the judges are the public prosecutors, the sheriffs, the chiefs of police, and
their subordinates. The American jury system, while it has many merits,
is likely to strengthen this dependence of justice upon local popular opin-
ion. If, as in the South, Negroes are kept out of jury service, the demo-
cratic safeguard of the jury system is easily turned into a means of
minority subjugation.

The popular election of the officers of law and the jury system are
expressions of the extreme democracy in the American handling of jus-
tice. It might, in spite of the dangers suggested, work excellently in a
reasonably homogeneous, highly educated, and public spirited com-
community. It might also work fairly well anywhere for cases involving only
parties belonging to a homogeneous majority group which controls the
court. It causes, however, the gravest peril of injustice in all cases where
the rights of persons belonging to a disfranchised group are involved,
particularly if this group is discriminated against all around and by tradi-
tion held as a lower caste upon whose rights it has become customary to
infringe. The extreme democracy in the American system of justice turns
out, thus, to be the greatest menace to legal democracy when it is based on
restricted political participation and an ingrained tradition of caste sup-
pression. Such conditions occur in the South with respect to Negroes.

If there is a deficiency of legal protection for Negroes, white people will
be tempted to deal unfairly with them in everyday affairs. They will be
tempted to use irregular methods to safeguard what they feel to be their
interests against Negroes. They will be inclined to use intimidation and