

Political Science

Court Unification and Democracy -- A Call for Reform

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Introduction

Court unification has been a bone of contention for many years. Critics for court unification have had legitimate reasons for wanting to consolidate the state court system, but is court reform built on an adequate foundation?

Friedrich (1940) believed that democracy needs administration that works, and administrative responsibility works best when there is accountability through the democracy system of governing. However, Finer (1941) saw the need for a democratic administrative process as being subservient. He believed that there must be some freedom from narrow restrictions in the administration of government. Though Friedrich and Finer might have disagreed on administrative responsibility, one thing is clear, administrative responsibility is necessary for court unification.

Over the years, court reform and court unification has evolved in a revolutionary working judicial system for most states. The implementation of Drug Courts in all states has led to some semblance of court reform.

According to Gallas, centralized unification is difficult to achieve, is Gallas right? Gallas viewed court reform from a detached perspective. Gallas (1979, 33) cited four interrelated consequences for court reform: "(1) an increase in the quantity of services with no absolute guarantee that services are better; (2) increase cost to taxpayers; (3) increased standardization; and (4) incremental not comprehensive systemic change." This is the first wave of court reform and there is a second wave as well. According to Lightcap (2016), "A second wave of court reform is sweeping the US judicial systems. Given its goals, there is a possible conflict between the first and second waves of state court system reform." The

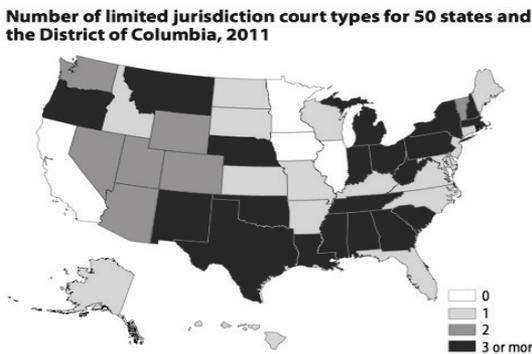
acceptance of court reform and court unification would be better understood by both citizens and legislators if they can relate to the actual benefits of these reforms. The question might be ---- is the responsibility and accountability of court reform visible?

What is Court Unification and What Does Democracy Have to Do With It?

Court unification can be explained as the consolidation and simplification of the structure of the courts, centralization of the administrative and management process, centralization of rulemaking, and centralization of budgeting. Unification of the state court system can be productive because it would have a uniformed way of conducting judicial business which in turn can save time and eventually save money. Moyer (2001) referenced Dr. Carl Baar, a professor of politics at Brock University as defining court unification as:

“--- a particular type of court reform in which an organization is created where none existed before. Our courts are primarily defined historically either as an individual judge or as an individual organization based in each county. When a court system is unified, it is a merger of individual courts into one entity. The courts and judges will continue to function in much the same way as they did before the system was unified, but unification should result in more efficient operation and should give the individual courts a sense that what they do have meaning beyond their locality and is helping to implement some important values for the state as a whole.”

Figure 1 shows the extent of court unification now found in the United States.



Source: Bureau of Justice Statistics, State Court Organization Survey, 2011.

Figure 1: Court unification in the United States (unified courts in lighter color)

It is also important to understand the idea of democracy and what it means in order to understand the court unification system. Arblaster (2002, 9) skillfully stated, "At the root of all definitions of democracy, however refined or complex, lies the idea of popular power, of a situation in which power, and perhaps authority too, rests with the people. That power or authority is usually thought of as being political, and it often therefore takes the form of an idea of popular sovereignty – the people as the ultimate political authority." Some believe that democracy is important in order for the administrative process to work and others believe that it is not necessary to have public opinion for the effective functioning of the administrative responsibility.

Friedrich believed that democracy needed administration that works, and administrative responsibility works best when there is accountability through the democracy system of governing. However, Finer saw the need for a democratic administrative process as being subservient. Finer believed that there must be some freedom from narrow restrictions in the administration of government. According to Friedrich (1940, 17),

"The responsible administrator today works according to anticipation. Within the limits of existing laws, it is the function of the administrator to do everything possible which will make the legislation work. The idea of enforcing commands yields to the idea of effectuating policy. For most of the policies of a modern government, at any rate under democratic conditions, require collaboration rather than force for their accomplishment." ... "It is very natural that policies which are novel in their creative impact upon society should elicit great many diverse public reactions. These will flow to the administrative offices in the form of inquiries, criticism, and suggestions. Under democratic conditions, the average citizen feels entirely free to communicate with the government, because he considers it his own. The problem of how to bring about responsible conduct of the administrative staff of a large organization is, particularly in a democratic society."

Friedrich also believed that administrative issues should be dealt with internally, and these should be dealt with by professionals. Al-Habil (2011, 44) cited Friedrich, "Friedrich (1940) believes that public officials can deal with administrative problems effectively through internal checks. These checks are created by professional standards and technical knowledge to ensure accountability. Thus, the professionals' responsibility cannot be held to politicians and elected legislators, but it should be to their colleagues who have the same technical knowledge and standards." However, Finer thought that administrative issues should be dealt with externally. He thought that the only way to hold officials responsible was through external elected legislators, because public profes-

sionals are not necessarily the ones to guarantee the public good. Citing Finer, Al-Habil (2011, 44) stated,

“On the other hand, Finer (1941, 7) thinks that external control by the legislators is the only way to maintain responsibility of officials in public administration. In general, Finer believed that public professionals cannot decide what is the appropriate action that ensures public good. Finer stated that ‘the servants of public are not to decide their own course; they are responsible to the elected representative to the public.’ Otherwise, the internal checks and control of professionals will lead, according to Finer, to corruption in public administration.”

Finer thought that there was a difference between having the knowledge of responsibility and the reality of responsibility. He also stated, “It is most important clearly to distinguish a ‘sense of duty’ or a ‘sense of responsibility’ from the fact of responsibility, that is effective answerability. But we must first of all be perfectly clear about its nature in order that we may not burke the question of whether or not such responsibility is sufficient to keep a civil service wholesome and zealous, and how far, in its own nature, it is likely to break down so that the political responsibility must be introduced as the adamant monitor of the public services (Finer, 335).”

A Call for Reform

Court reform includes fair and impartial justice for all, with equal justice using the rule of law. For court unification to work efficiently, court reform is necessary in a democratic system. Court reform can have its start in neighborhood communities that are mostly affected by low-level crimes. Partnership can be formed between businesses and community services to help bring about a solution to the crimes that plague the community. The community is entitled to justices for the crimes that affect it. This can be accomplished by having working relationships within the community. Feinblatt and Berman (1997, 1) emphasized, “It’s about creating new relationships, both within the justice system and with outside stakeholders like residents, merchants, churches, and schools.” This will help in the court reform which will also aid in keeping the community safe.

Feinblatt and Berman (1997, 2) looked at the New York City’s Midtown community court to help describe what can be done to reform the court system. “In 1962, New York City closed down a network of neighborhood magistrate’s courts that handled intake for the city’s court system, arraigning defendants and disposing of low-level offenses without forwarding them to any higher tribunal. Under the new system, intake and arraignment duties were shifted

to lower court judges in centralized courthouses serving each of the city's five boroughs. The change was intended to increase efficiency, and to an extent it succeeded."

Because some low-level crimes are committed due to quality-of-life, these cases were not given the attention as that of a felony case. Thus, the resources allotted to them were minimal and continued the cycle of community injustice because the source of the problems was not being addressed.

"As caseloads increased in the centralized courts, felony cases naturally began to claim more and more attention. Fewer resources were devoted to 'quality-of-life' misdemeanors like shoplifting, prostitution and subway-fare cheating. Judges were under tremendous pressure to dispose of such cases quickly. All too often, defendants arrested for low-level offenses were sent on their way after being sentenced to 'time served' in jail while awaiting their court appearance, or perhaps to a fine that might or might not be paid, or community service that might or might not be performed" (Feinblatt and Berman, 1997, 2).

This neglect of the court system does not teach the defendant anything; he is then free to return to the community and continue his or her crime spree. Neither the community nor the defendant is benefiting from such a court system.

There are many ways in which the court system can be reformed. These reforms can benefit the community as a whole since the community is the one that is impacted the most. Feinblatt and Berman (1997, 3), proposed six principles that can assist in court reform: "Restoring the community, bridging the gap between communities and courts, knitting together a fractured criminal justice system, helping offenders deal with problems that lead to crime, providing the courts with better information, and building a physical courthouse that reflects these ambitions."

Individuals who are interested in court reform must first recognize that communities are victims of these crimes. Creating a community court according to Feinblatt and Berman can reduce the possibility of more serious crimes taking place. The community courts allow the defendants of low-level crimes to pay back the community through community service. There must be that connection between the courts and the communities so that the community that is being victimized by these low-level crimes can see the results of what is being done to bridge existing gaps. This can be done by having "a community court put offenders to work in places where neighbors can see what they are doing. It also publicizes its social services and treatment accomplishments. Success stories give community residents and organizations tangible evidence

that the criminal justice system is accountable to the community” (Feinblatt and Berman, 1997, 4).

Another important aspect of reforming the court system is to have the court use its power to combine agencies. This will allow for everyone to be on the same page which can lead to time management and faster problem solving of the community crime issues. Feinblatt and Berman (1997, 5) highlighted, “Courts cannot be expected to solve difficult neighborhood problems by themselves. As courts look to play a more aggressive role in addressing complicated issues like quality-of-life crime, they must also look for new partners. Social service providers – both non-profits and government agencies – can provide valuable expertise, including counseling, job training, drug treatment, and mediation skills.” This type of arrangement will improve community life while assisting defendants with choices to make a better life for themselves.

Having the right information at the right time is also important in court reform. It gives everyone involved the opportunity to have the proper information that is needed and is easily obtainable. This is clearly pointed out by Feinblatt and Berman, “Entering new data into a central database simultaneously accessible by the judge, prosecutors, defense attorneys and social service staff allows all parties to share information as soon as it is available (1997, 5).”

Courthouses should be designed to accommodate reforms that are necessary. Besides being an environment that portrays aggressive authority, it should be one that shows the needed help to combat crimes committed by defendants who may have a hard quality-of-life. “Beyond holding pens, a courtroom, judge’s chambers and a clerk’s office, it must accommodate social service workers, victim advocates and community service managers; it also needs room to house community service workshops and to provide conference rooms for treatment sessions and classes” (Feinblatt and Berman, 1997, 6).

For court reform to also be a success, defendants need to know that they would be treated with fairness. Minority groups that tend to be more affected by the court system will most often welcome court reform that emphasizes procedural fairness. Individuals are more inclined to follow through with their end of the “bargain” if they know that they are treated fairly. Rottman (2007, 32) states, “Problem-solving courts, of which some 3,200 now populate the court landscape, have been shown in rigorous evaluations to reduce recidivism levels in drug and mental-health cases significantly compared to traditional court processing.” The likelihood of defendants been arrested for the same offenses is reduced because they find this type of court reform to be fair and trustworthy. For example, “The Portland Oregon, drug court reduced re-arrests between 17

and 26 percent over a 10-year period. What explains this advantage for the new type of form? Procedural justice is the answer, or rather: ‘the DTC [Drug Treatment Court] program, especially the judicial hearing, contributes to an offender’s perception of fairness and due process, thereby increasing his or her willingness to fulfill his or her part of the negotiated DTC agreement’ (Rottman, 2007, 33).

Minority groups, predominantly African Americans are not keen about the present court system because of the unjust treatment handed out to them. According to Rottman (2007, 34), “Minority distrust of the courts is undoubtedly linked to a more general level of distrust and dissatisfaction with the main institutions of American society. Procedural fairness allows us to locate the root source of that dissatisfaction and point to a way in which courts can respond, especially for people who appear in court as litigants, jurors, or witnesses.” This gives the minority group less reasons to believe that the court system is not treating them in a fair manner.

Respect, trustworthiness, and fairness should be the most important aspects of court reform. Since judges and administrators are the ones most influential in decision-making, court reform is necessary to affect the behavior of offenders in a positive way. Rottman (2007, 35) commented that, “Procedural fairness applies to all organizations, but it has particular relevance to judges and court administrators because it so clearly influences the effectiveness of court decisions. Protection orders are more likely to be followed, civil litigants are more likely to pay damages, and probationers are more likely to desist from crime.”

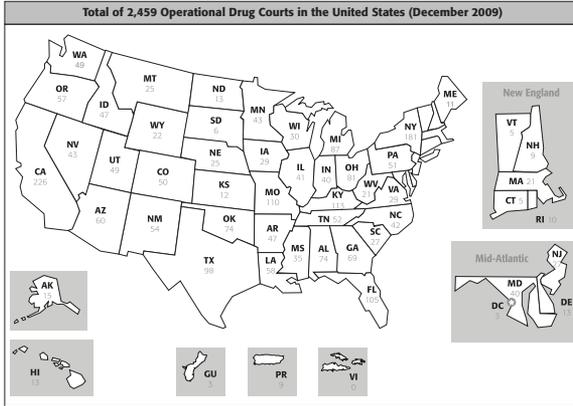
Judges can lessen the public’s discontent with the court system by making sure that individuals involved in any case have the ability to express themselves during the process. A clear understanding of how the decisions were made should be available to all involved so that there is no perception of biasness. Individual rights should be protected, giving them a sense of respectful treatment, and allowing them to know that they can trust the judicial system. Burke and Leben (2007, 4), suggested, “Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the elements of procedural fairness: voice, neutrality, respectful treatment and engendering trust in authorities. Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it.” The public also needs to become familiar with the legal system so that they are not confused because of a lack of knowledge about the system or because of wrong information. Procedural fairness is the way to go to make this possible. “In many ways procedural fairness bridges the gap that exists between familiarity and unfamiliarity and the differences between each person regardless of their gender, race, age, or economic status” (Burke and Leben, 2007, 4).

Individuals can take the opportunity of educating themselves about the functioning of the legal system. People have an inclination to lump together other parts of the system which makes laws to those that enforce the laws. This is because of what is being done in one branch affects how defendants see their encounter and treatment with courthouse employees. According to Burke and Leben (2007, 8), "The public has a tendency to see the judicial branch as intimately connected with other groups that help constitute the legal process, from the legislators who draft laws to the police who enforce them. The actions of these other institutions tend to 'spill over onto defendants evaluations of their experience with courtroom personnel and their general sense of fair treatment."

Most people however gain their "Knowledge" about the legal system from entertainment shows, such as Law and Order. This does not provide a proceeding channel to the court system in order to fully understand how it works. When members of a community are asked about how they obtain knowledge about the legal system, a large percentage of the people will reference the media or some entertainment shows. However, dealing with the courts themselves is the best way to receive knowledge which will not lead to misinformation. "Direct interaction with the court is a way to gain knowledge about the courts, but most members of the public receive information about the courts indirectly through various media outlets. Approximately 69% of surveyed Californians said that they 'often' or 'sometime' receive information about the courts from TV news programs and 59% gain knowledge about the courts from newspapers or magazines" (Burke and Leben, 2007, 11).

Another feature of court reform is drug courts throughout the country which seek to deal with the addiction problem. Repeated incarceration for drug addiction is counterproductive because it does not solve the drug problem. Instead, it continues the cycle of the crime. Having programs that treat the addict can help as part of the court reform process. This type of court reform was described by Farole, Puffett, Rempel, and Byrne (2005, 57), "In recent years, an array of innovative courts has emerged throughout the country in an effort to address the underlying problems of defendants, victims, and communities. Drug courts, which seek to break the cycle of addiction, crime and repeat incarceration by mandating that addicted defendants go to treatment programs." As Figure 2 shows, these courts have become very popular in recent years in the United States (Huddleston and Marlowe 2011).

Figure 2



www.ncjrs.org/pdffiles1/nij/20090101.pdf

Figure 2: Operational Drug Courts in the United States (2009)

The reforming of any institution is not an easy task. It takes time and effort to make the necessary changes that are needed. There can also be many obstacles to reforming the court system because planning and implementing can be confusing and time consuming if those involved are not cooperating and doing so in a timely manner.

The first reason why court reform can be a challenge to accomplish is, communities are hesitant to have offending criminals back as residents in their neighborhoods. Feinblatt and Berman (1997, 6) explained, "In particular, shifting the focus of criminal justice from case processing to community-mending is easier said than done. Furthermore, communities are understandably reluctant to accept arrested offenders back onto their streets. While supporting the benefits of community service, neighbors worry that an impersonal justice system won't be sensitive to their concerns about supervision." For this reason the community should be more involved in the functioning of the legal system. Once individuals have a better understanding of the functioning of an institution, the more likely they are to support it.

Secondly there is a level of uneasiness when it comes to the justice system working with the providers of the social service system. The justice system is focused on punishing criminals and not thinking about giving the opportunity for a second chance. However, the social service system concentrates on treatment which helps to reform the individual who commits the offense. As Feinblatt and Berman (1997, 7) say,

“Criminal justice agencies may also be uncomfortable working with social service providers. After all, the underlying assumptions and guiding philosophies of law enforcement and social work differ in fundamental ways. Criminal justice professionals are used to a system of escalating sanctions in which defendants are punished more severely each time they fail. Treatment professionals, on the other hand, expect relapses and consider it critical that clients remain in treatment regardless.”

If both the justice system and the social system can put away their differences and come together, then court reform will work for the benefit of all.

Court Unification as a Reform Process

In order to know whether or not court unification makes sense, one must understand what is meant by the consolidation and simplification of the structure of courts, centralization of administrative, and management process, centralization of rulemaking, and centralization of budgeting. Understanding these applications would lead an individual to decide in favor or not of court unification and if it is worth pursuing. A number of states have been using the court unification model for a while and we shall see how it has worked for the state of Georgia so far, but first, one must comprehend the structure of the court unification process.

Consolidation and Simplification of the Structure

The consolidation of any organization makes it easier to manage. If a single individual is in charge of a couple of branches within an organization, then it will be less confusing to manage compared to too many individuals not knowing exactly what one another is doing in order to effectively manage that organization. According to Moyer (2001, 10), “A consolidated court is defined as a court organization that has combined all divisions of the circuit court in a county; directed by a single person, with all non-statutory staff under a single appointing authority; with a single budget, controlling all financial accounting records and funds, with a single location to access most of the court case records.” This model can work effectively and efficiently once employees of the judicial system get used to it.

Centralization of the Administrative and Management Process

Having a centralized administrative and management system for the courts will also help in directing and facilitating the effective functioning of the courts. “By its very definition, the Office of Court Administration should be the central

nervous system of this complex organization. Directing administrative support, facilitating case flow management, steering technology enhancements, ensuring fair and equal access to the court and leading cooperation among the divisions of the court are just a few of the common responsibilities Court Administration Offices are tasked with across the state and nationwide (Reider, 2015, 4).“The management of the court system becomes manageable because of a centralized administrative authority. This makes it easier to manage, and the level of accountability will increase, thus leading to a better functioning system.

Centralization of Rulemaking

Centralized rulemaking is critical in allowing for the functioning of the court system to flow smoothly. This will help reduce the level of confusion that can arise from a decentralized system of rulemaking. Rulemaking as described by Owens (2013, 6), “It is a tool through which a court enacts procedures that have the effect of law, addresses its resolution of disputes, administers justice, and guides procedural, and administrative reform efforts.” Centralized rulemaking should be the authority of the chief justice or the supreme court of the state, thus, limiting the unnecessary confusion that can occur.

Some may argue that rulemaking is not necessarily the fix for the court unification system because it may not meet the needs for all jurisdictions. The quality of the results of the rulemaking can produce less than what the rulemaking was designed to accomplish. “While centralization of rulemaking and administrative authority is the most expedient method of resolving inconsistency, it is not necessarily the most beneficial solution. In fact, one of the most common complaints among opponents of unification is that centralized control of procedures will result in standardization without variation. In other words, jurisdictions that have fashioned unique procedures to meet regional needs will be compelled to follow centralized procedures may or may not be as appropriate or efficient (Hays, 1979, 12).”

Centralization of Budgeting

Centralized budgeting can work very well when there is fiscal stress if courts have to operate on a fixed budget. Court Unification can be helpful in that the administrative and management aspect of it reduce the friction between court employees. If there is a single administrator overseeing the functioning of the supreme court of the state and thus centralizing the functioning of the lower courts to the supreme courts, then individual courts that function

independently of each other will not have different rulemaking and budgetary issues will be limited. Baum (2013, 48) states,

“One area in which considerable centralization has occurred involves supreme court authority over lower courts. Nearly every state now has professional court administrators have substantial power over management of lower courts. In every state, the Supreme Court now has power to establish procedural rules for trial and appellate courts. These powers have been employed to differing degrees across the states, but they are used enough to bring about a considerable increase in centralized control over the courts.”

As previously mentioned, centralization of the court system has been a bone of contention for years. No one is claiming that this is an easy task to accomplish; but with the proper supervision and the right control along with the necessary cooperation of individuals of the courts and individual court system, court unification is possible. What can help in accomplishing the centralization of the court system is the correct training of court personnel. “Centralized supervision might also entail compulsory state-wide training programs for both judicial and non-judicial personnel. Such programs provide a convenient means of communicating general court policy. In addition to their educational value, they reinforce a sense of common purpose among a court system’s staff (Berkson, Hays and Carbon, 1977, 112).”

The Flexibility of Court Unification

There is a certain level of flexibility when it comes to the unification of the courts system. Baar (1993, 184) explains this in his description of both the Illinois Circuit Court and the South Dakota Circuit Court systems. “Although two classes of judges have been retained in both states, those serving as associate circuit judges and law-trained Magistrates generally praised the operation of their courts, and unification has meant a degree of flexibility still rare in states with separate general and limited jurisdiction trial courts.”

Consolidation of the courts allow for more flexibility in that the management of caseload becomes easier, record systems are better managed, and there is uniformity in the procedural framework. This process works well for the state of Missouri. “In the state of Missouri, trial court consolidation does work. Consolidation improves the structure of the courts allowing more flexibility in allocating court staff and judicial staff to areas with increased caseload; improving the management structure; combining the record systems for better access; centralizing the budget and making operational procedures more uniform. This enables the trial court to be prepared to meet changes that occur (Moyer,

2001, 8).” Having the flexibility that the state of Missouri court unification system has, will assist in the training of personnel because the staff that is trained in all areas can easily go to areas where they will be needed. This will allow for the smooth running of the judicial system which will also lessen the level of confusion that is likely to result. Flexibility in any organization always works to the advantage of that organization.

Figure 3 represents how well the court unification system can come together, and South Dakota can be used as a model for the rest of the country to follow.

South Dakota

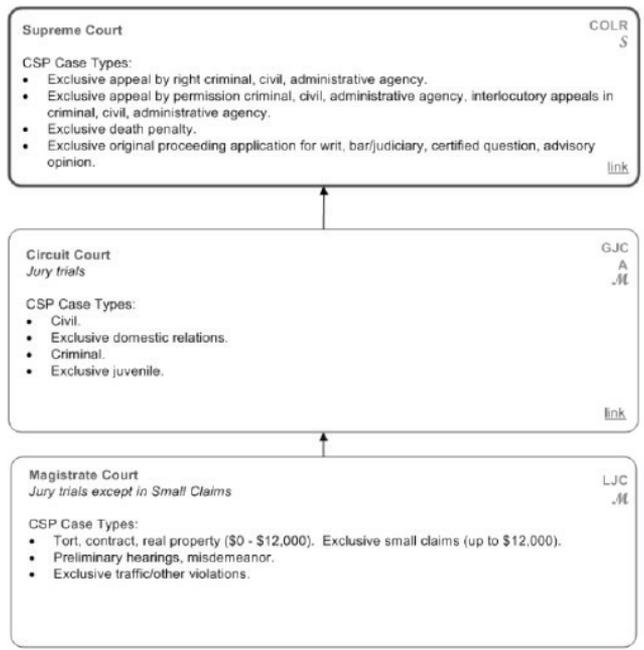


Figure 3: The South Dakota Unified Court System (NCSC 2013)

Holewa (2009, 101) also stated, “Without consolidation of court system, South Dakota would not have the flexibility to reassign judges as needed. As things now stand, judges may be assigned to any court and any case type within the district and the chief justice may appoint them to any court and any case type within the state.” This consolidation will aid in moving cases along quickly and will reduce the need for using other judges which will eventually lead to a reduction in cost.

Unification of court makes for the fiscal responsibility of administrators to come into play. This is important because the budgetary implementation can be concentrated on the environment for which it was budgeted and not cross over into areas of the court system that the budget does not cover, thus, leading to a strain on the financial system. Berkson, Hays and Carbon (1977, 30-31) highlighted, "Although financial management is largely an internal matter, it spills over into the surrounding environment when such officials have to lobby before various legislative bodies in order to obtain desired funding and when trial and appellate court requests are subject to review by the highest state court in those jurisdictions with unitary judicial budget."

However, funding of the trial courts can make a huge difference in the court unification system. Though some may disagree, it will help in the administrative functioning and the level of accountability that was not there previously. "The accelerated pace of state funding of trial courts is a significant factor in state court unification. Judicial administration academicians and practitioners disagree, however, about the desirability of state funding. This is not to say that this form necessarily is the best, but rather that it reflects the political realities of the time which include legislative requirements for public accountability through unitary budgeting and central administration (Lawson, 1982, 280–281)."

Why Should Court Unification Be Considered

Unification of the court system is imperative, yet difficult to accomplish because some states may be able to fulfill some aspects of it while others will take forever to get it done, if at all. Lawson (1982, 275) stated, "Some states may not achieve both goals, or at least not at the same time. Other states may implement only one form of unification. Proponents of unification advocate that both occur at the same time or that structural unification precede administrative unification." Court unification can be challenging but it can work effectively if all sides work together to get it done.

Court Unification should be considered because it will enable uniformity for different jurisdictions, it will improve public trust for the judicial system, and it will allow individuals to receive the necessary treatment put forth by the judicial system. Moyer (2001, 43) cited Carl Baar as giving some reasons for unification. "That unification often produces uniformity among jurisdictions enabling citizens to receive equal judicial treatment. In addition, it may increase the independence of the judiciary as an institution while increasing accountability and responsibility among judges. Unification also may lead to the development of an effective system for scheduling cases and for managing judicial workload."

Conclusion

Court unification has been working for some states for many years. Though it may be difficult to implement at first, the advantages outweigh the disadvantages in the long run. Gallas is right because an increase in the quantity of services does not necessarily assure better services. Yes, there could be an increase to taxpayers because consolidation of the court system will have an increased cost which is normally handed down to citizens. However, court reform is necessary and important once everyone involve, work together to make it happen. States have used the community service oriented court system and have seen some measures of success. States have also had to increase their budgets so that funds can be allocated for these service oriented courts.

Although both Friedrich's and Finer's opinions on the responsibility and accountability in the governing of democratic systems are still up for debate, the reformation of the court system will make it easier for court unification to take hold; because, citizens will receive equal treatment, and citizens will be more trusting of a centralized court system. This will also lead to the accountability and responsibility that is essential for the continual effective and efficient functioning of the judicial system. Court unification will improve on the administrative and managerial process, improve rulemaking and greatly help in the fiscal handling of the financial aspect of managing a judicial system.

Even though court unification is working for some states, court reform has seen gradual changes and probably will continue to see step-by-step changes.

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