

# THE IOWA JUDICIARY, FUNDING, AND THE POOR

DRAKE LAW SCHOOL CONSTITUTIONAL LAW SYMPOSIUM

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Alexander Hamilton famously admonished in the Federalist Papers that the third branch of government was, in practice, the weakest branch of government because it controlled neither the sword nor purse. Yet, I am sure Hamilton could not have truly appreciated the seriousness and impact of those words today. Across the nation, states have tightened the purse strings of the courts, even in states, like Iowa, that operate with a surplus of funds. Over the last five years, forty-two states have cut their court budgets. For a branch of government charged with the responsibility to ensure that government operates within its constitutional framework and maintains constitutional rights for all, these cuts present a danger. Inadequate court funding not only adversely affects the important mission of the courts, but in very real terms, it can adversely impact court access by users, especially the poor and less fortunate who often rely on our courts for many basic needs.

A complete discussion of the adequacy of court funding begins by considering the amount of funding currently devoted to the courts. Court funding is actually a very small portion of the operation of government. In most states, it accounts for less than 2% of the total state budget of state government. Moreover, when the costs of court funding are balanced against the revenues produced by courts through fines, fees, and the like, some state court systems actually operate at no cost to the taxpayer. In Iowa, for example, the revenues collected at the state, county, and city levels exceed the total cost of operation. From a financial standpoint, courts are a real bargain. Additionally, funding is almost entirely devoted to compensating the highly skilled professionals who operate the system. In Iowa, employee salaries account for 95% of the annual operating budget.

At the same time, it is important to consider court funding in the

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context of the comprehensive and enduring public benefits provided by courts—a value that carries such a small price tag. Courts function to protect constitutional values, interpret statutes, and apply the rule of law in the course of resolving disputes and problems in society. The Judicial Branch operates uniquely different than the other branches of government to provide the stability and confidence essential to a democracy. A few years ago, the World Bank conducted a study to identify the factors that account for the wealth and success of a country. The study found that the most important resource to account for the wealth of a country, by far, was the presence of a fair and impartial court system. Fair and impartial courts are critical to economic development because people are willing to invest in a country only when they have confidence their investment will be protected by the law in a fair and impartial manner. This concept not only applies to business investment, but also to the investment and commitment of people. The open doors of a courthouse in a community serve as a beacon of justice that projects the promise of a more just society as each generation is given a better understanding. Courts also protect, enforce, and strive to rehabilitate. At times, courts offer our troubled youth the best opportunity for a productive future, and work to carry out policies of protecting society and rehabilitating offenders. In short, courts may be our most valuable asset.

With the value of courts in mind, inadequate funding for courts seems, on the surface, to be an incongruent response. Yet, this response is understandable upon closer examination. The funding of courts is the responsibility of the legislative branch of government, which increasingly gives courts an uneven playing field. Courts were designed to be removed from the policies of the other two branches of government, and the judicial branch must compete for its dollars in the legislative arena alongside the various departments of government and outside interests, but without any real political constituency or political muscle. Disproportionate cuts to the judicial branch of government in recent years reveal the results of this culture. In the last twelve years in Iowa, for example, court staff has been cut by 17% while total state employees have increased 2.5%. Today, the part-time 150-member legislature employs the same number of lawyers to assist them in writing legislation as the over 200 full-time judges have working as law clerks to assist in writing their decisions.

There is also a growing fear that funding for courts has been jeopardized by unpopular court decisions, which is part of a larger general misunderstanding of the court system and its essential role in society that has adversely impacted judicial support. The recent movement to

downsize government that has taken hold in many states has only exacerbated the problem of inadequate funding.

The result of underfunded courts is beginning to take its toll. For most states, cuts have slowed the processing of cases. In Iowa, the courts operate at the same staffing level as in 1986, but with a 60% increase in workload. In the last fiscal year, all judicial employees, including judges, were furloughed for ten days. The courthouse doors were closed to the people. Judicial vacancies are not promptly filled in an effort to cope with the lack of funds. Yet, the price paid by the slowdown is often profound, especially for children in a pending custody dispute, for instance, who are forced to worry for an additional four to six months over which parent he or she will live with after the divorce is completed instead of worrying about the test in school tomorrow.

Underfunded courts have other unwanted effects. Specialty courts, which have been shown to be very effective, have had to be eliminated or reduced due to budget cuts. Yet, while drug courts, family courts, and mental health courts are more expensive to operate because they require more staff and attention, they have been shown to be very effective and can save the state millions and millions of dollars in the long run. Court-provided services for indigent persons, criminal victims, and non-English speaking persons have also been curtailed. The hours available for public access to the clerks of court offices have been reduced, and the slowdown of civil litigation has prompted litigants with financial means to take their cases into private resolution. Although research has shown that a state saves millions and millions of dollars when juvenile delinquents avoid entering the prison system, juvenile court services have been curtailed. In many judicial districts in Iowa, for example, there are not enough juvenile probation officers to meet with first-time juvenile offenders face-to-face.

Underfunding has also meant that there is less staff and less time for staff to devote to the cases in the system. Too often, the legal system is not doing its job in the way it should be done. For a justice system, this is unacceptable.

The lack of funding has also been accompanied by inadequate judicial compensation. This is not only causing judges to leave the bench, but presents a problem of recruiting the best lawyers to become judges. In New York City, trial judges are paid less than many first-year associates in the large law firms. In Iowa, judges have not had an increase in salary in four years. It is time for the public sector to compensate judges a level commensurate to the compensation of experienced and highly skilled

members of the legal profession in the private sector. This should be a given, not a tired goal.

Equally serious, underfunding has diminished the spirit of court staff to do their best work. Overall people are simply worn down by underfunding. This consequence too is especially troubling in a justice system that depends on devoted and committed people to do its best work.

It is more and more apparent that litigants who are able to opt out of the court system to resolve their disputes are beginning to do so. Those litigants with modest financial means have no alternative remedy, and the system is consequently being left to those who are without the clout to help provide the needed support. For a system that depends on cases to develop the law, this trend is especially troubling. It is a recipe for less and less funding.

It is worthwhile to consider the factors that might explain the state of underfunded courts. As with so many other aspects of life, the cause of a problem must be identified, not just the symptoms. The main cause of underfunded courts is that underfunding has become a culture. It has become our way. There's also been a tendency for politicians to use court issues for political gain, even at the expense of courts. Another cause is simply the unwillingness of judges to step out in public to advocate for a change in this culture. Yet, the time has come for a solution to be found.

First, courts can begin the march toward a solution by operating with greater transparency. The court system must understand that people outside the system looking in do not necessarily see what the people see from the inside. The difference must be eliminated through greater transparency. The public must be willing to support the mission of the courts, and the courts must work in a way that the people can be given understanding. Courts can no longer work in isolation and expect the public to understand its work. The polls all show that the public wants good, fair, and impartial courts, and they will like what they see when given an opportunity.

Second, courts must remove courts from the culture of politics. Today, courts are caught up in the ideology of the larger message of "cut government." Judicial independence not only means judges must operate independent of public and political pressure, but also that budgets must be established independent of the political process. Alexander Hamilton made it clear that judicial independence requires complete independence. He said, "Without [judicial independence], all the reservations of particular

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rights or privileges would amount to nothing.”<sup>1</sup> He also indicated that an informed, educated public was essential to the existence of judicial independence. The process of court funding must have greater public understanding.

In truth, there is hope to achieving fully funded courts. There is hope because adequate funding does not require a large amount of money, and the courts provide a valuable service for everyone. With just a little more funding, the court system can work for everyone in a very efficient and sound way.

Unlike many other social problems faced in society, court funding is fixable, and the benefits are apparent. It is a problem that can be solved and one that should be a national priority.

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1. THE FEDERALIST NO. 78, at 466 (Alexander Hamilton) (Clinton Rossiter ed., 1961).