

Epic Change: The Evolution of the Legal Profession

The Role of the Judiciary in a
New Paradigm

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Historical Change

Evolution of the Judiciary



The original Supreme Court established by the Constitution met in the Old City Hall, Philadelphia. There were six members, decisions were made by two-thirds majority and justices were then called judges, all of which were changed by Congressional action.



Historical Evolution of the Judiciary

- 1787 Article III, The U.S. Constitution outline of the judicial branch of government.
- 1789 The Judiciary Act of 1789 established a federal court system.
- 1801 The Judiciary Act of 1801 reorganized federal judiciary circuit judgeships.
- 1802 The Judiciary Act of 1802 reorganized the federal courts.
- 1863 Establishment of a Tenth Circuit and a tenth seat on the Supreme Court.
- 1869 Establishment of circuit judgeships; Supreme Court seats at nine.
- 1875 Authorization for the federal courts to exercise the full jurisdiction.
- 1891 Establishment of the U.S. Circuit Courts of Appeals.
- 1911 Abolition of the U.S. Circuit Courts.
- 1922 Establishment of the Judicial Conference of the United States.
- 1929 Division of the Eighth Judicial Circuit and establishment of a Tenth Circuit.
- 1939 Establishment of the Administrative Office of the U.S. Courts.
- 1967 Establishment of the Federal Judicial Center.
- 1968 The Federal Magistrates Act.
- 1978 Establishment of U.S. Bankruptcy Courts.
- 1980 Division of the Fifth Judicial Circuit and establishment of an Eleventh Circuit.
- 1982 Establishment of the Federal Circuit.



Epic Change

Rulings Have Changed Society

- Environment
- Women's Rights
- Democracy
- Private Property
- Crime
- Intellectual Prop.
- Business Disputes
- End of Life
- Philanthropy
- Sports
- National Security
- Education
- Immigration
- Transnational
- Estates
- Taxation
- Social Security
- Public Airwaves
- Veterans
- Bankruptcy
- Family Law
- Resources
- Finance
- Faith
- Health Care
- Public Services
- Infrastructure

Epic Change

Court Filings by the Numbers

- 56,475 U.S. Court of Appeals filings
- 375,870 U.S. District Court filings
- 284,604 Civil Filings
- 91,266 Criminal Defendant filings
- 1,107,699 Bankruptcy filings
- 131,869 Post-Conviction Supervisions
- 108,705 Pre-Trial Service

Global Change

Proliferation of International Courts

- International Court of Justice
- International Criminal Court
- Permanent Court of Arbitration
- Permanent Court of International Court of Justice
- Dispute Settlement Body of the World Trade Association
- International Tribunal for the Law of the Sea
- African Court of Justice
- African Court on Human and Peoples' Rights
- COMESA Court of Justice
- ECOWAS Community Court of Justice
- East African Court of Justice
- SADC Tribunal Africa
- Caribbean Court of Justice
- Eastern Caribbean Supreme Court
- Court of Justice of the Andean Community
- Inter-American Court of Human Rights
- Benelux Court of Justice
- Economic Court of the Commonwealth of Independent States
- European Court of Human Rights
- European Court of Justice
- European Commission of Human Rights
- European Free Trade Association Court
- European Nuclear Energy Tribunal
- European Union Civil Service Tribunal
- Human Rights Chamber for Bosnia and Herzegovina
- Beagle Channel Court of Arbitration
- Iran United States Claims Tribunal
- International Military Tribunal
- International Military Tribunal for Far East
- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda
- Mechanism for International Criminal Tribunals
- Special Court for Sierra Leone
- Extraordinary Chambers in the Courts of Cambodia
- Special Tribunal for Lebanon

Global Change

Proliferation of Hybrid/Regional Courts

HYBRID COURTS

- Emergence of a “third-generation” of criminal bodies (the Nuremberg and Tokyo Tribunals being the first, and the ICTY, ICTR and ICC being the second generation), Hybrid Courts include the jurisdictions with international and national features: Crimes Panels of the District Court of Dili; “Regulation 64” Panels in the Courts of Kosovo; Court for Sierra Leone

ARBITRATION COURTS (not listed above)

- International Centre for Settlement of Investment Disputes (World Bank)

REGIONAL COURTS (not listed above)

- Court of Justice of the European Communities and Court of First Instance
- Court Of Justice Of The European Free Trade Agreement
- Court Of Justice of the Benelux Economic Union
- Central American Court Of Justice
- Common Court of Justice and Arbitration of the Organization for the Harmonization of Corporate Law in Africa
- International Centre for Settlement of Investment Disputes
- North American Free Trade Area dispute settlement procedures

Source: <http://www.pict-pcti.org/index.html>

National Disputes

U.S. Supreme Court Decisions, 2013

- Florida v. Jardines and Florida v. Harris
Use of police dogs to sniff out drugs per the **Fourth Amendment**
- Clapper v. Amnesty International USA
Foreign Intelligence Surveil. Act, 2008
- Kiobel v. Royal Dutch Petroleum Co., Inc.
Foreign nationals in U.S. Courts for crimes outside U.S.
- Windsor v. U.S.
The Defense of **Marriage Act**
- Shelby County v. Holder
Voting rights, voter ID laws
- Fisher v. University of Texas at Austin
Affirmative action
- Federal Trade Commission v. Actavis
Generic drug payments
- Association for Molecular Pathology v. U.S. Patent and Trademark Office
Gene patents
- Maryland v. King
DNA evidence

Epic Polarization

Legislative Action by the Numbers

There are **10,238 bills** and resolutions currently before the United States Congress. Of those, only about **5% will become law**.

- **113th Congress** is not faring well:

Passed Laws: (184) **2%** of 10,238 Bills

Example: H.R. 606: To designate the facility of the United States Postal Service located Tyrone, New York, as the
“Specialist Christopher Scott Post Office Building”.

* GovTrak.us

THE NECESSITY OF JUST GOVERNANCE

In a more just economy and society, two key components are essential:

- 1. Prevention of accumulated power**
- 2. The ability to adapt to rapid change from innovation**

The role of the Judiciary, based in finding justice, is expanding in response to the needs of society.



THE REASONING BEHIND AN EXPANDING ROLE OF THE JUDICIARY

- The legislative and executive bodies of nation-states **move society forward by agendas**. They generate and often dictate laws that reflect the interests of the most powerful institutional sectors in each society.
- To ensure that **the new Relational Economy** is a freely flowing system will require the evolution of the way we settle the natural conflicts that are a part of rapidly changing economic life.
- The world's current governing systems are **institutional rather than relational, agenda-driven rather than justice-driven, amoral rather than moral**.

FUNCTIONS OF THE JUDICIARY

- Administration of justice is the primary function

- (1) **Judicial Functions:** 'determine' the facts of laws and apply them
- (2) **Guardianship of the Constitution:** "The Constitution is what the judges say it is"
- (3) **Advisory Jurisdiction:** in some countries the President may seek the advice
- (4) **Protector of the Fundamental Rights:** prevent the individual's rights being violated
- (5) **Supervisory Function:** in some countries supervision over the lower courts
- (6) **Non-Judicial Function:** administration of property; minor children

(7) **Law-making Functions:** when existing laws may be ambiguous or conflicting

What is Judicial Governance?

The Judiciary's mission is based in finding justice.

- A growing global network of courts and judges, supported by collaborative and integrative law innovations, are settling disputes, adjudicating cases and making new laws based on a relational approach to governing.
- **The principles of Judicial Governance** are case law with precedent, equal access to law, democracy, and just enforcement.
- **A moral Judicial Governance system is simply one that allows the natural ethics of the Golden Rule to be expressed.**

PROGRESSION OF SOCIETAL RULE

GOLDEN STAFF --> GOLDEN MEAN --> GOLDEN RULE

- PREHISTORY; EGYPT
 - GRECO-ROMAN
 - ENLIGHTENMENT
 - HIERARCHICAL
 - LEGALISTIC
 - RELATIONAL
 - FAIR JUSTICE
 - BLIND JUSTICE
 - EQUAL JUSTICE
-

Expression:

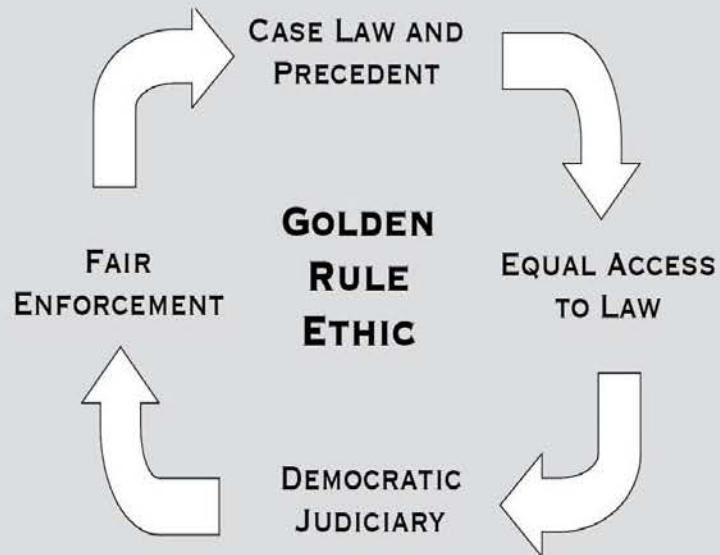
- Solomon's judgment
- Lady Justice
- 14th Amendment (due process)



The Golden Rule Ethic

- 1. Empathy:** We become aware of the other.
- 2. Compassion:** We move from empathy to a stronger identification with the other's feelings and circumstances as if they were our own.
- 3. Engagement:** From a compassionate desire to help the other we move to the reciprocal engagement of right action.
- 4. Unity:** From compassionate engagement we begin to lose the separation we originally felt toward the other.

THE FOUR PRINCIPLES OF A JUDICIAL GOVERNANCE SYSTEM



FUNDAMENTALS OF JUDICIAL GOVERNANCE

Golden Rule Imperatives expressed for societal control and direction:

1. Empathy --> Precedent

CASE LAW

1. Compassion --> Equality

EQUAL ACCESS TO LAW

1. Engagement --> Self-Governance

DEMOCRACY

1. Unity --> Consent

FAIR ENFORCEMENT

Progression of a Judicial Decision

CASE NO. C11-2043JLR; UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON; THE INSTITUTE OF CETACEAN RESEARCH, et al., Plaintiffs, v. SEA SHEPHERD CONSERVATION SOCIETY, et al.; July 21, 2014, Decided; July 21, 2014, Filed

BACKGROUND

- Humpback whales reach a nadir of 5,000 after over-whaling
- The Int'l Whaling Commission adopted a moratorium on commercial whaling but left open "scientific research" option, which Japan used
- Paul Watson of The Sea Shepard rammed whaling vessels
- Interpol issued a Red Notice for Watson
- Watson arrested, flees, spends 15 months at sea to avoid arrest
- Cetacean Research brought suit for injunction and damages
- Seattle District Court ruled in favor of Watson
- Watson returns to U.S. and is not arrested
- Ninth Circuit reversed and branded Watson as "pirate"

CURRENT 2014

- Int'l Court of Justice ruled that Japan breached convention
- Interpol drops Red Notice
- Paul Watson's motion to dismiss claims as moot and unripe denied; suit ongoing

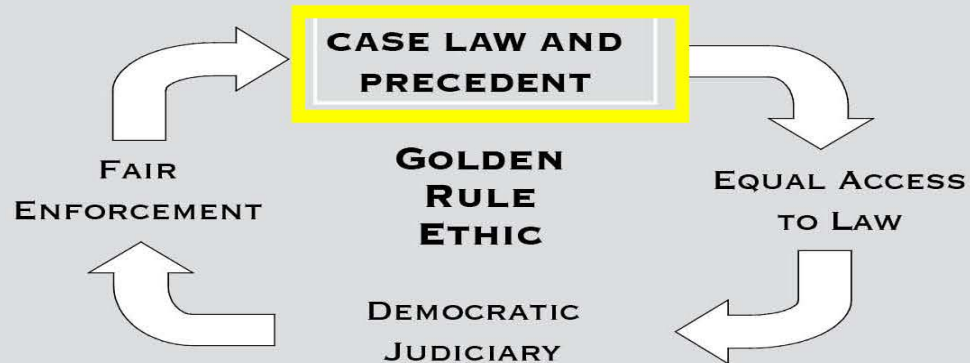
Humpbacks now number 80,000 due to public opinion and global justice system

The Golden Rule Applied to the Progression of a Judicial Decision

- **Empathy:** Public opinion against whaling
Case Law: International Whaling Commission moratorium
- **Compassion:** Rights of both parties in dispute
Equal Access to Law: Interpol; National Courts; Int'l Courts
- **Engagement:** U.S. District and Federal Courts stop "piracy"
Democracy: International Trade Court ruling
- **Unity:** Humpback whales protected
Fair Enforcement: Interpol dropped; Japan ceases operations;
Watson allowed to return to U.S.

JUSTICE: Do unto others as you would have them do unto you.

THE FOUR PRINCIPLES OF A JUDICIAL GOVERNANCE SYSTEM

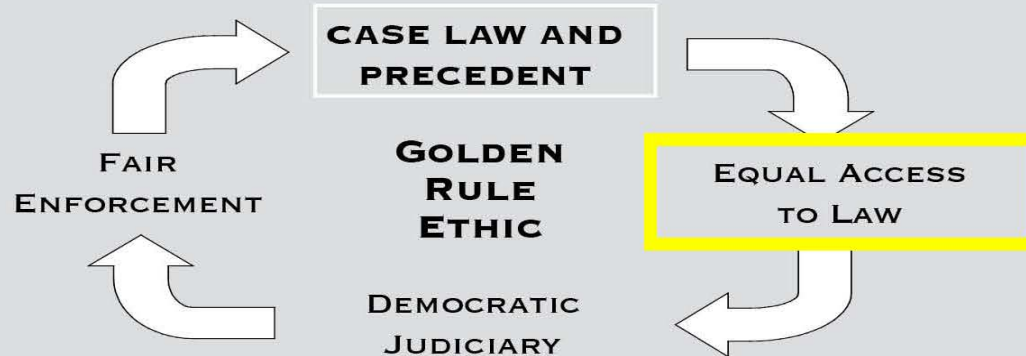


The Judicial Governing Principle of Case Law and Precedent

EMPATHY AS JUDICIAL ACTIVATOR

The Golden Rule process of empathy activates the context of Case Law, which enables judges to modify the laws (through for changing conditions. The court's ability to apply equitable principles would allow for the evolution of historically legislated and administrated laws that are bogged down in bureaucracy and agendas.

THE FOUR PRINCIPLES OF A JUDICIAL GOVERNANCE SYSTEM

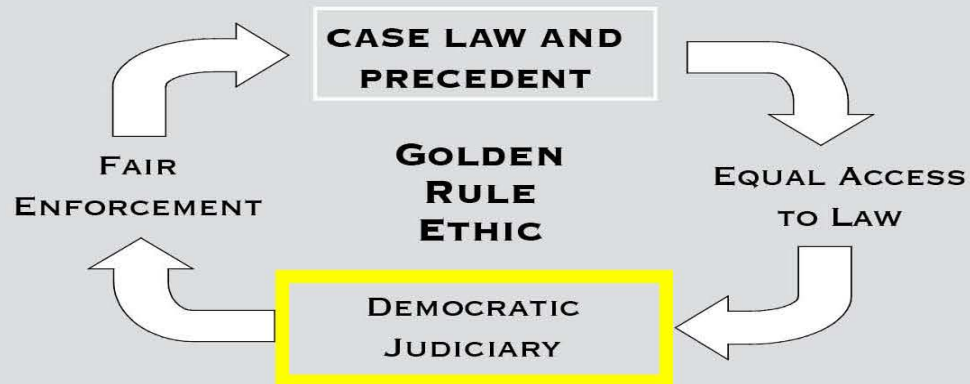


The Judicial Governing Principle of Equal Access to Law

COMPASSION AS JUDICIAL ACTIVATOR

The Golden Rule process of compassion activates the context of Equal Access to Law, which enables every citizen the opportunity for justice. Equal access to law with a right to fair trials and appeal ensures that no person is above or below the law.

THE FOUR PRINCIPLES OF A JUDICIAL GOVERNANCE SYSTEM



The Judicial Governing Principle of Democratic Judiciary

ENGAGEMENT AS JUDICIAL ACTIVATOR

The Golden Rule process of engagement activates the context of Self-Governance, which enables every citizen the opportunity for justice. A democratic judiciary elected by an informed citizenry made possible by new electoral technologies will ensure impartial and competent judges.

THE FOUR PRINCIPLES OF A JUDICIAL GOVERNANCE SYSTEM



The Judicial Governing Principle of Fair Enforcement

UNITY AS JUDICIAL ACTIVATOR

The Golden Rule process of unity activates fair enforcement to assure the mutual consent of citizens required for just governance. Fair enforcement with due process and due penalties in the context of community enables personal transformation within a law-abiding society.

The Legal Profession is Responding

The Judiciary is rapidly evolving with innovations that resolve conflicts by **Golden Rule processes**.

- **Collaborative Law:** a private and holistic approach to conflict resolution, which empowers the parties to a conflict to resolve the dispute themselves with the assistance of those trained in collaborative law and the utilization of resources designed to heal the core causes of the conflict and facilitate a resolution of it.
- **Private Law:** laws pertaining to relationships between private individuals; to be distinguished from public law, which is law pertaining to relationships between the general population (individuals and organizations, such as corporations) and the state

Problems to be Addressed

- Litigation too expensive
- Costs prevent equal access
- Caseload Increases
- Complexity of cases
- Democratic elections
- Politicizing cases
- Rise of global Rule of Law
- Transnational cases
- Increase in international cases
- Data security and privacy
- Reliance on the Judiciary in the wake of polarization of legislatures and the rapid change of heads of state

One Attempt to Evolve the Judiciary

29 Proposed Principles

Institute for the Advancement of the American Legal System; Am. College of Trial Lawyers Task Force on Discovery & Civil Justice

1. Flexibility in rules for civil procedure
2. Fact-based pleadings replace notice-based
3. Discovery in proportion to cost/benefit
4. Written expert reports
5. Reduce dispositive motions to reduce delay
6. Single judicial officer for each case

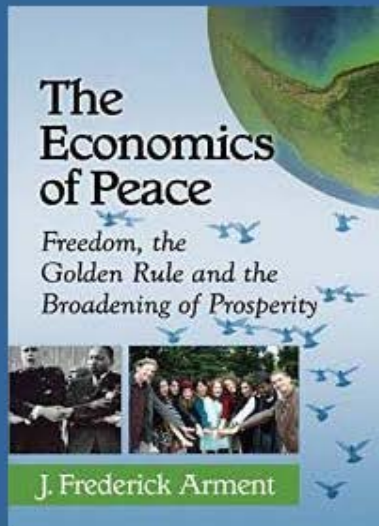


Where are today's John Marshall and William O. Douglas?

1. How will the Judiciary evolve to solve inherent problems?
2. How will the Judiciary step up to increased responsibility of governance?



Relational Economics with Judicial Governance



- Publisher: McFarland & Co Inc Pub (December 31, 2014)
- <http://www.mcfarlandbooks.com/book-2.php?id=978-0-7864-9638-9>
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**“The Economics of Peace:
*Freedom, the Golden Rule, and
the Broadening of Prosperity*”**

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