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The Constitutional Design of Jonathan Adler

By Sarah McIntosh

Recently Wichita was fortunate to have the Koch Foundation sponsor a visit by Jonathan Adler. If you are only familiar with the designer by the same name you are missing out. Professor Adler is a well-respected constitutional scholar at Case Western University specializing in business and regulation law.

His speech centered on how some cases should be reviewed under the Supreme Court's jurisdiction and some should be handled at the state court level. His argument was not that the Supreme Court shouldn't actively review cases but rather that some decisions should be left at the state level. He argued that the court should stick to constitutional questions and avoid the temptation of taking on pure policy cases.

Adler's view is that the court has done a good job restricting some jurisdictional reviews but has occasionally restricted too much as well. One example of good restricting, he posited, has been the court's denial of jurisdiction purely based on taxpayer status. This plays out in cases where taxpayer's money may have been spent on a program but other than that involvement the individual has no other personal stake in the matter.

Upon questioning Adler was quick to explain that his advocacy of restricting cases is not limited to clearly enumerated constitutional rights but extends to a more general set of constitutional questions. The key point Adler articulated was that the court should refrain from giving into the allure of fixing what it may consider to be bad public policy.

Adler's point is an important one for all of us who follow what the court does or even those of us who only periodically hear about Supreme Court cases. When deciding cases the Justices need to have a set of guiding principles and the public needs to have a sense of the role of the court. Deducing whether or not a particular case has been rightly or wrongly decided should depend on principle not just what "feels right or wrong." There are times that cases come before the court that our gut may say should be decided a certain way but it is not always the job of the court to decide those cases.

Clearly, however, if a case involves a true constitutional question and the parties have standing (as well as the other requirements for the court to hear a case), then it is reasonable and right for the court to rule in that matter. But, if the case merely has to do with "bad policy" set by a state - that falls outside of the role of the court. The court was not created to be the final arbiter of all decision-making. Rather, its role is to preserve the U.S. Constitution and the constitutional rights of the people. And sometimes this will mean that the court will need to decline to rule on cases where the situation seems unfair or even unjust but where the constitutional implications

are lacking.

At the end of the day this discussion and these concerns should not be limited to the few constitutional scholars amidst us. Instead it should be something we all contemplate as the court makes its decisions. Furthermore, we all should be aware that there is more than one Jonathan Adler and although I cannot comment on Professor Adler's design capabilities his ability to articulate constitutional construction is superb.

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