

## **“The Arrogance of Power”—in Kentucky today and about Indiana 20 years ago**

The Kentucky State Senate seat representing the 37<sup>th</sup> District. What a strange tale! And so many questions remain. Why would Dana Seum Stephenson file for the seat if she didn't think that her candidacy was legitimate? Why did Virginia Woodward wait until the day before the election to register her complaint? Why did Stephenson and David Williams fail to appeal the decision of the Jefferson Circuit Court judge? Why did Stephenson live in Indiana when she could have had in-state tuition at IUS under the reciprocity agreement between Indiana and Kentucky which began in 1995? Can one be a “resident” of one place and live somewhere else? And if Stephenson is not deemed to be a legitimate candidate, then what do you do? Can you award an election to a loser? Under the law, how can there be an arbitrary special election?

Independent of all that, my favorite quote so far about this episode is from a Democratic state senator, Gerald Neal, referring to the Republican leadership in the Senate: “They exhibited the arrogance of power.” I'm not sure whether Senator Neal meant it this way, but his comment didn't limit “the arrogance of power” to one political party—a wise choice of words. Is there much doubt that the events in the 37<sup>th</sup> District would be very similar if all of the actors in the drama were switched to the opposing major political party? If the seat in dispute was won by a Democrat of questionable residency and the relevant body of the legislature was controlled by the Democrats, wouldn't we be surprised if the Democratic leaders were not making the same sorts of arguments we hear from David Williams today?

It's almost always this way within politics these days—and not just among politicians. Pundits and partisans of all stripes often seem to see the facts and interpret the evidence in a manner strangely favoring their own interests. Bill Clinton is a man of regrettable moral lapses to one party and something just short of the Devil to the other. To one group, George Bush is a war-mongering ignoramus who deceived us about WMD; to the other group, he is somewhere short of the Second Coming. One party exploits the foibles of Armstrong Williams and Tom DeLay, while the other side holds their noses and offers a half-hearted defense. One party points to Dan Rather and James McGreevey while the other side looks away. In elections, each side talks about the data and the proposals so selectively, simply trying to make the case for their candidate. And each side “holds to the rule of law” only as long as it's convenient. What a mess! In addition to having a coherent political philosophy, another advantage of being a Libertarian is that I don't need to worry about major-party partisanship and defending what is, objectively, indefensible. It allows me to sleep better at night.

Returning to Gerald Neal's quote, it's important to recognize that the practice of governance is all about the “legitimate” use of power—not legitimate in the sense of moral or ethical, but legitimate in the sense that it is, by definition, legal. Sometimes the use of power is relatively innocuous (e.g., law enforcement of stop signs); sometimes the use of power is quite popular (e.g., redistributing money to certain interest groups); sometimes the power is embraced out of humility or some sense of compassion (e.g., taxation to provide disaster relief). Nonetheless, the practice of government is still the exercise of power over other people—getting some people to do what they would not otherwise do (or not to do what they would otherwise do).

In a republic, we choose representatives who then decide how to use this power. In a democracy, as with a referendum, voters choose how the governing authorities are allowed to use this power. For example, when voters in Jefferson County approved the merger a few years ago, some of the victorious proponents of merger proclaimed that Louisville was unified and one community. But the reality was that 51% got what they wanted, while 49% were forced to accept the alternative they didn't want.

By itself, this should incline us away from government solutions. All things equal, it is preferable to let people choose their own way—as long as they're not harming others—rather than forcing them to go another way. Ethically, when should government use its force? To redistribute money to the poor and the non-poor, to tax you for eating too much fast food, to prevent you from smoking pot? Practically, when will it be effective for the government to try to force people to change their behavior? Among other practical problems, using force on people is likely to stir up animosity and resentment. Beyond that, using political power to baldly benefit a small group—or the perception of such—is likely to be met with hoots of indignation from the ones without political power. As such, any political party which is perceived to be taking advantage of its majority position will come under legitimate scrutiny for the way in which it wields power.

When considering the Stephenson/Woodward episode and the perception of the raw use of political power, a more important legislative race from 20 years ago comes to mind. In 1984, the Democratic incumbent for the U.S. House from the 8<sup>th</sup> District of Indiana, Frank McCloskey, was in a tight race with his Republican challenger, Richard McIntyre. McCloskey won the initial count by 72 votes, before two subsequent recounts showed McIntyre to be the victor by 34 and then 418 votes. As a result, the Republican Attorney General of Indiana declared McIntyre the winner. (By some accounts, this is also the origins of controversial chad-counting methods!)

But Article 1, Section 5 of the U.S. Constitution says that the U.S. House is the final judge of its own elections (a position that the Supreme Court has refused to modify). The process is that the Committee on House Administration makes a recommendation on the matter to the full House which then decides. In this case, the Democratic-controlled Committee (interestingly, chaired by Leon Panetta—later, a chief-of-staff for President Clinton) determined, along party lines, that McCloskey had won by four votes. The Democratic-controlled House followed suit and voted, again along party lines, to grant the victory to McCloskey. Not surprisingly, many Republicans were furious, especially after 30 years of Democratic control of the House—often with a large majority and often with at least the perception of abusing their power.

Going into that election, the Minority Leader had been the affable Robert Michel. There were, of course, Republicans who were less conciliatory—among them, a young representative from Georgia named Newt Gingrich. But this event galvanized the mavericks and they were able to wrest control away from Rep. Michel and the establishment-oriented wing of their party. Apparently, seeing Michel shake McCloskey's hand just moments after the Republicans had walked out of the chamber in protest was interpreted as a clarion call for leadership change. From there, Gingrich was a feisty Minority Leader, forcefully arguing for Ethics violations against the Speaker of the House, Jim Wright, before engineering the "Contract with America" and the takeover of the U.S. House by the Republicans in 1994. (Perhaps fittingly, Rep. McCloskey lost his seat that same year.)

Oftentimes today, people wonder about the rank partisanship of national government—and they hearken back to some yesteryear when politicians were more refined and less vicious in their dealings with each other. Some people point to the attacks on Robert Bork’s nomination to the Supreme Court or the Willie Horton advertisements of the 1988 campaign. But arguably, given the way history has unfolded, the McCloskey/McIntyre race is a better choice as the key catalyst.

But in another sense, if there are two dominant political parties that are highly competitive, can it really be any other way? Going into the mid-1960s, government did relatively little and what it did, it did relatively well. Partisanship makes less sense in that context. From the mid-1960s forward, government has become increasingly active—in terms of taxation, spending, and regulation—increasing the stakes of political activity and the usefulness of partisanship. In a time of narrow victories in the Electoral College and narrow majorities in both houses of the Congress, what else should we expect when so much is at stake?

What can the Kentucky Republican leadership learn from the McCloskey/McIntyre episode? Be careful in how you use your power—or at least, how its use is perceived. What can the rest of us learn? Government is a powerful entity and its force can be wielded in a capricious manner. Before we ask government to spend money or change behaviors, we would do well to wrestle more completely with the contexts in which the exercise of government power is both ethical and practical.

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