

If you were able to set the standard for judges, what would you do, say, or develop to avoid the risks of the political structure using the judiciary to effectuate policy?

* This is an extremely broad question. To answer, I am not sure it is possible to set a standard for judges to avoid the risk of the political structure effecting policy. This is because of the human factor. Judges are people as well. Legal Realism addresses this and proposes that outside influences continually influence the judge's ruling. In this question, the outside influence would be the political structure.

* The problem with setting any type of standards that guard against such political structure (influence) is that it would necessarily entail narrow language with little interpretation. This is because statutes drafted to consider independent interpretation (Distributive Justice) is what created the problem of political influence.

* I would leave the standards as they are now. This draws a diversity of thoughts, intents, and motives, thus leaving the gateway to the marketplace of ideas open. "His choice, according to Dworkin, is threefold: first, he may give a decision on moral (rather than legal) grounds; secondly, he may lie and declare the law to be what he would prefer it to be; or, thirdly, he may resign" (Wacks, 2009, p. 58).

Question: Take, for example, the treatment of people of color in the Southern United States well into the 20th Century. What would you do to avoid that and why?

* I must answer with the obvious: I would take a time machine back to 1791. I would enter the Constitutional Convention and require that Equal Protection and Voting Rights clauses were inserted into the Fifth Amendment. I would then require that the Tenth Amendment recognized all federal protections at the state level and that this area of debate was occupied/resolved. I would also require that a person is defined narrowly to include men and women of all creeds, nationalities, and ethnicities.

* Next, I would take my time machine to various Supreme Court rulings when the new Fifth and Tenth Amendments were challenged. I would use proper means to ensure that the judges (who had to be activist at such a time due to lack of precedent) set the correct precedent from the beginning. I would disguise myself as a Clerk and employ narrow language in the ruling that discouraged all challenges. My end goal: Someone seeking to challenge my legal drafting knew they were defeated from the onset.

Reference:

Wacks, R. (2009). *Understanding jurisprudence*. New York, NY: Oxford University Press, Inc.