NEVER SAY SORRY

Judicial 'independence' is code for unaccountable power.

Editorial by Dick Greb

"Independence" generally has a positive connotation. In the context of the individual, it evokes the blessings of liberty, the freedom from governmental constraints and interference. But in the context of government action, independence is not necessarily such a blessing to the people. In the face of massive government bailouts of bankers and other corporate executives, Texas Representative Ron Paul's bill to audit the Federal Reserve[1] is gaining ground, and with 317 cosponsors in the House, could actually withstand an Obama veto.

Federal Reserve Chairman Ben Bernanke, testifying before the House Financial Services Committee, was concerned that the legislation would be "a repudiation of the *independence* of the Federal Reserve." Of course, what Ben really means by "independence" is "unaccountability." He's obviously concerned that if the Fed is made accountable for its actions, it will have less freedom to fleece the American people while lining its own (and Wall Street's) pockets.

It is in this same context that we should consider the so-called independence of the judiciary in America. It is claimed to have been intended to insulate judges from the political influences inherent in the elected branches of government.[2] This is why federal judges are appointed to lifetime terms, and why their pay cannot be reduced while they're in office.[3]

Yet this supposed protection from political influence is something that occurs only *after* a judge is appointed to the bench. Because in order to get his appointment, a judge must run through a political gauntlet which serves to weed out the politically unacceptable candidates — that is, politically unacceptable to the politicians who give them their jobs in the first place. If a federal district court judge makes decisions that are unpopular with Congress or the President, then he will never be chosen to advance to the higher courts. So, these lower court judges are only independent insofar as they are *willing to stay where they are.* And don't forget, they would never even be sitting on a district court bench unless they were perceived to be of such character that they would ultimately do the will of those who appoint them.

The same goes for circuit court judges. If they have any aspirations of someday sitting on the Supreme Court (and which of them, do you imagine, doesn't?), they are no more independent of the political branches then district court judges. In fact, since they will usually have years of both district and circuit court rulings from which the President (who appoints them) and the Senate (which confirms their appointment) can distill exactly what decisions to expect from them, there will be few surprises in store from the winner.

In this way, the only judges who make it into the various federal courts are those who can be relied upon to uphold the political agenda of the government. They may disagree on some issue or another, but in the long run, the successful appointees will be the ones deemed most likely to decide cases in the way that best legitimizes whatever action the government takes —

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1. HR 1207, the Federal Reserve Transparency Act. The companion bill in the Senate is S 604, the Federal Reserve Sunshine Act.
2. "The Framers of the Constitution realized that, in order to properly interpret and impartially apply the law, the judiciary must be above politics. For these reasons, they wrote the Constitution in a manner that would ensure that the courts are not subject to the improper influences of the political branches of government, as the executive and legislative branches are called." See http://www.uscourts.gov/outreach/resources/judicialindependence/history.html.
3. Art. 3, Sec. 1 of the Constitution: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

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whether such actions be illegal, immoral, or otherwise unconstitutional.

So the only real independence the judiciary enjoys is independence from the citizenry. *We* are the only people from whom the judges have nothing to worry about. They are well aware that we have no effective recourse against federal judges who violate their oaths of office by allowing our rights to be violated and by sanctioning government's usurpation of powers never delegated to it. And of course, that problem is one that will always be present when every cause of action against the government will be decided by a branch of that same government. What are the odds that government will lose when it is the judge of its own cause?

In its history of judicial independence, the judiciary's website (see footnote 2) cites the impeachment proceeding against Federalist Supreme Court Justice Samuel Chase that began in 1804 as further defining the concept:

> This trial established the precedent that impeachment proceedings should not be used to remove judges who issue unpopular rulings. Judges are free to ***make rulings that the law requires*** without fear of losing their job if their ***rulings prove to be unpopular***. (emphasis added)

Yet while judicial independence may protect judges who make unpopular rulings *against* the government that the law requires, it provides no protection for us whatsoever when they make unpopular rulings *in favor of* the government, but against the law of the land.

Ironically, in discussing the impact of judicial independence, the judiciary's website cites the landmark case *Brown v. Board of Education* (347 U.S. 483 (1954)) as demonstrating "how judicial independence was necessary to protect the civil rights of all citizens. Due to the support of discriminatory laws in certain parts of the country, African-American citizens *could not always turn to the elected branches of government to protect their constitutional rights. Instead, they turned to the federal courts.* Being above politics and not directly susceptible to public opinion, the Courts were able to provide these citizens with the relief the Constitution demanded."[4]

Lest this self-aggrandizement get out of hand, we should remember that the court in *Brown* was merely overturning, *after six decades*, the "separate but equal" policy the court had endorsed back in 1896, when Plessy, who was one-eighth black, was arrested for refusing to ride in a train car designated for blacks. As you can see, being "above politics" is no guarantee of freedom either. In the end, accountability to the people is the only thing that can provide that guarantee.

4. http://www.uscourts.gov/outreach/resources/judicialindependence/impact.html

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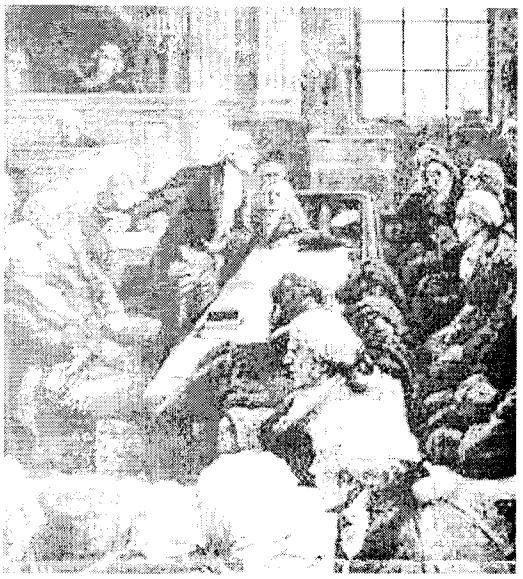
data — is that the globe has not been warming since 1998. Further, as the recently exposed "Climategate" emails and source codes for CRU climate models reveal, the CRU has been attempting to "hide the decline" in temperature and has fraudulently fudged the numbers to reach results they want. Several prominent GW scientists also appear to have conspired to keep skeptical scientists from publishing anti-GW work in peer-reviewed journals. In short, the entire global warming hypothesis stands revealed as nothing more than a corrupt political hack job. There really is nothing new under the sun.

Payback for Burr.



The trial of Aaron Burr.

A good illustration of the lack of "judicial independence" and the "one hand washes the other" tendency of politicians and judges is found in the saga of the impeachment proceedings of Justice Samuel Chase and Vice President Aaron Burr, later tried for treason. Regarding the impeachment proceedings and Burr's involvement, PBS says:

> Vice President Aaron Burr, ... gave Chase's lawyer, Luther Martin, the opportunity to present a complete defense of his client. ... Burr prevented Chase from being railroaded, and in the end, Chase was acquitted. ... When Aaron Burr was tried for treason two years later, Marshall [a Federalist who had feared he was next in line for impeachment] would be on the bench, and Luther Martin would be Burr's attorney. ***Both men [Chase and Marshall] would remember what Aaron Burr had done for them. ...***

A few years later:

> Conspiring with James Wilkinson, Commander-in-Chief of the U.S. Army and Governor of Northern Louisiana Territory, Burr hatched a plot to conquer some of Louisiana and maybe even Mexico and crown himself emperor. ... But Wilkinson betrayed him, and Burr was captured in Louisiana in the spring of 1807 and taken to Richmond, Virginia, to stand trial for treason. ***Acquitted on a technicality***, he faced resounding public condemnation and fled to Europe.

It appears the justices really did remember the services Burr had rendered.

Source: http://www.pbs.org/wgbh/amex/duel/peopleevents/pande01.html and pande02.html. (emphases added)