

The Mad Grab to Voice the General Will

The hallmark of a Rousseauian government is the race between different officials to become the mouthpiece and hand of the General Will.

This video was inspired by an episode of the Brion McClanahan Show titled [“Is Justice Jackson the Future of SCOTUS?”](#) That episode focuses on an essay by Jonathan Turley titled [“The Chilling Jurisprudence of Justice Ketanji Brown Jackson.”](#) Turley discusses two of her recent dissents and the worrisome implications of her statements.

Worth noting Turley self-identifies as on the right, so his preference of Trump to Jackson is not really surprising and may not be entirely based on pure reason

According to Turley’s interpretation of Jackson’s dissent in *Trump v. CASA*, Jackson wants district judges to maintain their ability to create nationally binding injunctions against the Trump admin. He quotes Amy Coney Barret’s decision, which calls Jackson’s dissent “at odds with more than two centuries’ worth of precedent, not to mention the constitution itself.”

Turley observes that Jackson would replace an imperial presidency with an imperial judiciary. It is worth noting that he ignores the problem of an imperial presidency in this essay, but this has been a regrettable facet of the presidency since the adoption of the constitution. John Adams and his Alien and Sedition Acts to strangle criticism is one example. Lincoln’s desire to preserve the union at any cost turned the constitution into a suicide pact. Teddy Roosevelt put forward the self-serving idea that, since the president is the only federal office subject to a vote of all the people, that the president is especially suited to push the will of the people (the “general will” in a Rousseauian framework).

Jackson’s latest scramble for power is merely another self-serving attempt to grab as much power as possible for herself and other activist judges.

In a Lockean or post-Lockean framework, limited government (in principle, not merely in current status) is the goal, and the separation of powers exists to reduce the severity of government overreach by pitting various wings against each other. The judiciary exists to interpret law, which means either looking at the way the people creating the law perceived it or reading the text of the law. Ignoring the text of the law would be in logical contradiction with the purpose of creating the judiciary, and therefore is not correct.

Turley highlights another dissent by Jackson in which she laments the judiciary’s attachment to the letter of the law. This is diametrically opposed to the rationale behind the existence of the judiciary. This kind of “follow your heart” system is a path to unlimited power, and also a path for bad agents to exercise their wills without accountability.

Such a conception of the judiciary is something one might find in a Rousseauian system, where there are no principled limits on government power, but not in a Lockean or post-Lockean system.

Worth noting is that Mises further refined the classical liberal ideals to require legitimate governments to reject market intervention. Anything else, according to Mises, is a path toward socialism, war, and disaster.

The classical liberal framework differs from the Rousseauian framework in that the classical liberal believes (however imperfectly and unachievably) in government power limited by specific, written

principles. However, since governments may act in limited ways while refusing to acknowledge any principled limits on their powers, the line between a Lockean system and a Rousseauian one can be hazy.

In a system with no principled limits on government power, we understand from analysis of incentives that the officials will scramble to be seen as the voice of the general will, to use Rousseau's terminology. In addition, they will seek to avoid personal accountability for their actions.

A president is always vulnerable to being singled out for his destructive policies. Lincoln is an excellent example. His position as the "face" of the government makes it harder for him to avoid responsibility.

The question is, how do other government officials, scrambling for power, avoid accountability?

Legislators delegate their lawmaking powers to "experts" in "regulatory agencies." These bureaucrats generally take no individual responsibility for policy moves, and they can point to rule books that were created in accordance with other rule books as to why responsibility for this or that disaster should lie elsewhere.

Judges avoid accountability in other ways. They may hide behind intentionally opaque language that can be interpreted in any desired way. They may also avoid accountability by making appeals to emotion: "This man should/shouldn't be punished for this, regardless of the law."

The less accountable the government is, the less likely it is to serve the interests of the people. Rather, it will pit the people against each other in a constant bid for more and more power. This is the final form of the Rousseauian government; a body with no limits and no responsibility to serve the people.

How can we avoid this? In the imperfect classical liberal framework, we can insist upon governments acceptance of strict limits on their powers, with a rigid constitution in which any interpretation that appears to be open-ended is assumed to be wrong. For instance, the argument that "necessary and proper" means "convenient" is invalid because practically any power can be "convenient" to the government.

To further improve the situation, we can instead discard the dangerous notions of implied consent and social contract, and work instead to build a society based on voluntary agreements, covenants, contracts, and self-consistent, reciprocal moral frameworks.