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City upon a hill: Judicial elections erode the spirit of Common Law

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In this election year, the presidential election has stolen the media spotlight and public attention. While some voters might be apathetic toward the presidential elections, state and local elections should receive more public participation in November because many laws and policies affecting our daily lives are from state and local governments.

In North Carolina, voters might be more interested in the gubernatorial elections than the judicial elections. Given the prospect that republicans have dominated the General Assembly and that's not likely to change in the short-term, the judicial elections are important in achieving a balance of powers.

Six seats on North Carolina's state-level courts will be on the ballot on Nov. 8. These include one seat on the North Carolina Supreme Court where Judge Michael R. Morgan will challenge the incumbent Justice Robert H. Edmunds Jr., and 11 other candidates competing for five seats on the North Carolina Court of Appeals.

Though judicial elections in North Carolina claim to be "nonpartisan" with rules that attempt to alleviate the influence from political parties, money and politics are still major factors as long as they are general elections. For example, in the last judicial elections of 2014, the North Carolina Voters for Clean Elections Coalition reported that outside political groups had spent an additional $1.4 million on the races.

Due to the nature of elections and politics, elections degrade the impartial and independent nature of judicial functionalities. From a common law perspective, where judges discover law from precedents and common practices followed by people in a society, judicial elections should not be conducted.

Jim Harper from the Cato Institute makes a clear distinction between the different patterns of thinking in the common law and civil law. He argued that common law has strong adaptability and consistency when dealing with new cases. Judges and courts combine existing rules and precedents to produce what they believe is the most just and fair outcome.

Unfortunately, in many common law countries like the U.S. and U.K, the spirit of common law has been undermined by increasing weight on statutory laws made by governments. Thus, judicial elections are a prolonging effort to eliminate the common law tradition because elections provide room for putting political interests ahead of justice.

As Harvard Law professor Noah Feldman pointed out in a column in Bloomberg View, judicial elections are "idiotic" while 38 states have them. He made a radical call for the Supreme Court to consider the constitutionality of judicial elections in those states. Contrary to popular belief, the scope of democracy and an independent judiciary may not be compatible.

In the Federalist Papers No. 78, Alexander Hamilton emphasizes that judges should be independent as it ensures the federal courts ability to strike down statutes that are unconstitutional. Hamilton foresees the erosion of common law by statutory laws over time and ensures that judges have a greater power to battle legislature and executive.

Denying judicial elections does not mean that appointing judges is perfect. Hamilton understands that humans are all fallen creatures. Hamilton thought that appointing judges for a lifetime tenure might be a more effective means to fulfill the vital role of the judiciary branch.

Without changing the institutional setting, a less harmful way to ensure the independence of the judiciary would be to elect incumbents, reducing the pressure of reelection and the curse of election cycles. Though judges might be affiliated with political parties, consistent support from constituency can let them focus more on justice and maintain independence.