ON RECENT UNITED METHODIST JUDICIAL COUNCIL ACTION

22MAR19

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If you don't have any interest in the law and justice system of The United Methodist Church, then this would be a really good place to stop reading and go do something that might please you more, like go to your dentist for a root canal procedure. But if you might like to know about a couple of big mistakes the United Methodist Judicial Council (Council) has made in its last two outings, then you might want to bear with me and read on for a bit.

In Judicial Council Decision (JCD) 1366, which the Council tendered on the question of whether or not two of the plans for moving forward were in keeping with the Church's Constitution, the Council said that a local church could withdraw from the Church only if it voted to do so by a two-thirds super majority and if the annual conference (regional area governing body) ratified that decision by its own two-thirds vote. It based this finding on what I considered to be the bizarre interpretation by implication that a totally unrelated provision for how a local church is to transfer between United Methodist annual conferences when the physical territories of the annual conferences overlap applies to local church withdrawal from the denomination. In the case addressed in the existing constitutional law, nobody is leaving The UMC. I've written in more detail about that in these pages below, if you care to read more of that detail, which I don't encourage. You can find JCD1366 here, if you care to look, and I don't encourage that, either.

http://cdnfiles.umc.org/W.../JCD_1366_(Docket_No._1018-12).pdf

I thought that was bad, but the Council made it worse when one of the parties to the proceeding, Tom Lambrecht, asked it to reconsider that part of its decision, and it declined.

Then the Council was asked to make another decision on the constitutionality of what the legislative committee as the special session of the General Conference had adopted and thereby proposed to the full plenary session, and it tendered JCD1377 as its response. In that process the Council had another chance to reconsider what it had said on this matter in JCD1366, and instead of doing that, it doubled down on its error.

In JCD1377 the Council not only reiterated that the unrelated paragraph of the Constitution called for annual conference ratification of the withdrawal of a local church, it said the following:

"If an annual conference is to play a vital role in planting new churches and ministries, it must also be given a role in the disaffiliation process of local churches within its boundaries. Petitions 90059 and 90066 infringe upon the reserved rights of the annual conference in ¶ 33 and are, therefore, unconstitutional."

If you think I'm making up that last part, you are mistaken. That's from the Judicial Council, the highest JUDICIAL body of the Church, not from somebody who is a member of the LEGISLATIVE body who is stating her/his advocacy of a piece of legislation that is being considered for adoption. There cannot be a clearer case of inappropriate judicial activism than this. What the Council is unmistakably saying here is, "There really ought to be a law that gives the annual conference a role in the disaffiliation process for local churches, but we can't find one, so we'll make it up and put it in place."

You can find JCD1377 here:

http://s3.amazonaws.com/.../Judicial_Council_Decision_1377_wi...

In the Council's defense, by the time it was composing JCD1377 in the wake of JCD1366, three of the members had awakened to what it had done, repented, and when JCD1377 was presented the decision contained their dissent from the majority on both the points I have made. They said the law upon which the decision in JCD1366 was based did not apply, and that the expansion of the idea further in JCD1377 was an exercise in legislation, not in judicial decision. A subtle implication of that dissent, and the level of it, is that if one more jurist had switched to agree with the dissenting triad,

then the Council might not have been able to declare the legislation at issue to be unconstitutional. For the Council to be able to declare an act of a General Conference to be unconstitutional it must have six of its nine members in support. In this case it had exactly that number, but if it had had only five, then the result might have been one instance where the provision was said to be unconstitutional and another in which the Council had been unable to make that declaration. I qualify all that with “might,” since the proposed legislation on which the Council based its decision was not yet an act of the General Conference, and the Council might not have been bound by this restriction in its decision process. We don’t know, because we haven’t had a test case. It would have been fun to see.

The saddest thing in this is that because of the independence we’ve to a large extent built into our governance, we don’t have any way to hold the Council to account for this kind of blunder. We depend on it to restrain itself, and in this case, that trust was misplaced.

http://cdnfiles.umc.org/Website_Properties/JCD_1366_(Docket_No._1018-12).pdf?fbclid=IwAR1P-5D_irQvvVWLpdbQOhQMi8_02jOMGp30brqc7QAG_2IMFuPTD1R4YHM