Unshrouding Our Day-to-Day Courts

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Justin Weinstein-Tull, *The Structures of Local Courts*, _ **U. Va. L. Rev.** _ (forthcoming 2020), available at SSRN.

Most of the conversation about *Kansas v. Glover* considered the Fourth Amendment's bearing on traffic stops. But one detail has gone unmentioned: *Glover* began in Kansas District Court, that state's trial court. It then travelled to the Kansas Supreme Court, before finally arriving at the Supreme Court of the United States. This hardly seems noteworthy. After all, state supreme courts, along with federal courts of appeals, are among the most well-trodden paths to the Supreme Court, and those state cases must begin somewhere.

Yet *Glover* is, quite literally, a statistical outlier. As Justin Weinstein-Tull describes in *The Structures of Local Courts*, only 0.3% of local court cases—cases like *Glover*—litigated through trial receive a state supreme court opinion, and fewer still receive one from the United States Supreme Court. Their scarcity at the pinnacle of our judicial system belies their ubiquity throughout it. In 2015, for instance, 361,689 criminal and civil actions were filed in federal court, while 86.2 million (yes, million) were filed in local courts. Most legal disputes begin and end in local courts, yet they're markedly absent from legal scholarship. This article fixes that. Weinstein-Tull provides a trenchant account of local courts, illustrating their structural diversity, revealing how a state–federal law latticework leaves them mostly free from oversight, interrogating our conception of their purpose, and imagining reforms and new lines of scholarly inquiry.

But first, what are "local courts" anyway? Weinstein-Tull defines them as "any non-appellate judicial court authorized or created by state law." Like many past jots, Weinstein-Tull's focus reflects a concern with the courts most responsible for dispensing day-to-day justice to their constituents.

These courts are worlds unto themselves. Because they're creatures of state law, local courts are more diverse than their federal analogues in both form and function. Many perform functions beyond typical adversarial adjudication, like drug courts in Missouri, which divert certain defendants from the ordinary criminal-law system and place them into rehabilitation programs. Others experiment with changes to their litigation processes, such as Utah's online small-claims courts, which relieve litigants of the burdens of in-person litigation.

But many issues beset local courts, which can turn them into "constitution-free zones," as one advocate remarked to Weinstein-Tull. Most importantly, many lack adequate funding, often resulting in understaffed courts, physically inaccessible courthouses, glacially slow trials, opaque proceedings, and incomplete records. One woman in a California court had to translate for her husband because the court lacked interpreters—despite the fact that she was in court only to apply for a restraining order against him. Elsewhere, Weinstein-Tull recounts a time when a local court clerk acted "as though they had never had such a request" for a court transcript for an appeal.

Against this backdrop comes Weinstein-Tull's key contribution: He weaves together disparate threads of state and federal law to reveal how the former shapes local courts and how the latter shelters them. State law, Weinstein-Tull explains, shapes local courts in myriad ways, including in how it administratively oversees local courts, how it funds them, how it appoints and retains judges, and how it substantively reviews their legal decisions through its appellate process. This means "that some local courts are well-monitored by the state system and many are not."

Take their funding sources. Some local courts are funded entirely by the state. Yet others are funded locally, without state financial aid or the financial prescriptions dependably attached to state aid. Between these funding bookends lie many more state–local funding configurations. These configurations matter. Local courts that are locally funded,

Weinstein-Tull shows, favor their localities over their states. They view state procedures as less applicable to them, preferring instead to develop local procedures that, in turn, splinter existing statewide uniform rules. Nor are these local rules invariably better: Some local procedures, ostensibly created to raise revenue, penalize marginalized communities and contribute to their overincarceration. Altogether, the choices made in shaping local courts aren't merely theoretical; they carry real consequences.

And while state law shapes local courts, federal courts shelter them from most scrutiny. In theory, federal courts partner with state courts in a complementary scheme to administer justice nationwide. But because ordinary rules of appellate procedure—like deferring to a trial court's factfinding absent clear error—circumscribe an appellate court's review, and because so few local cases are reviewed by appellate courts in any event, Our Federalism's respect for state courts is more properly understood as a respect for local courts, Weinstein-Tull concludes. So understood, doctrines such as preclusion, abstention, and habeas corpus—which "purport to vindicate federalism values by promoting *state* courts generally"—require federal courts to defer to local courts' decision-making specifically. When federal courts deny habeas petitions, for example, they rely on a record primarily developed in a local court to do so—one that may lack interpreters or even a standard process for requesting transcripts of its proceedings.

Apart from deferring to their decision-making, federal courts also protect local courts through stringent doctrines that shelter them and their officials from reform efforts. Standing requires litigants to prove that they would likely reappear before the local court—eliding the fact that many litigants in local courts are not repeat players. And litigants whose claims can pass through the courthouse doors are often thwarted by generous immunity doctrines. Because of this, all but the worst offenses go unreviewed.

All of this, Weinstein-Tull argues, should lay to rest the "myth of the state court": "the idea that state courts are an analytically coherent concept that we can discuss as a single, monolithic alternative to federal courts." Common arguments for the value of state courts—really, local courts—in judicial federalism focus on their capacity for experimentation, their distinctive interpretation of constitutional concepts, and their ability to communicate state preferences through federal-law adjudication. Yet these values are served best when local courts are diverse and visible. But local courts are not diverse and visible; they're diverse and obscure. We cannot evaluate whether local courts live up to these values because we cannot see what local courts *do*. Rather than shy away from this and pretend that local courts are rough facsimiles of federal courts, Weinstein-Tull urges us to view them earnestly and on their own terms.

And what might an earnest look entail? For their part, states should require local courts to show their work; publishing their opinions and proceedings, Weinstein-Tull suggests, would enable stronger oversight. Federal courts, on the other hand, must be more aware of the reality, rather than the myth, of state courts, tailoring their doctrines to better vindicate federalism's values. Beyond these suggestions, Weinstein-Tull also imagines future lines of scholarly inquiry. Scholars might ask how local-court jurisprudence actually functions, rather than assuming that local courts inflexibly apply the methodologies and doctrines of higher courts. They might also investigate how local courts exercise their considerable discretion too. These inquiries, Weinstein-Tull predicts, are among the first steps toward reconnecting us with "the law in our lives."

Local courts matter now more than ever. As the pandemic courses through the United States, local courts have reacted with timely ingenuity. Some have begun what might be called modern-day circuit riding, travelling in RVs through towns to meet with litigants directly. Others have forged ahead with pilot programs that tackle the cresting eviction crises washing over their communities. But many local courts, reliant on local funding, have begun to curtail their staff and operations. "Local courts," Weinstein-Tull says, "reflect the justice we have, not the justice we aspire to or the justice required by written law."

His excellent article not only reminds us of this oft-overlooked fact but also lays the foundation for fruitful future scholarship and reform.

The author's views here are his own and do not necessarily reflect his employer's.

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