

News from somewhere

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HABEAS CORPUS

A new Spanish law has decreed that bodies of deceased Spanish citizens belong to the state. Under this law the bodies may be used immediately upon death by hospitals for transplants without consultations with relatives. The only exemptions will be those who carried a card stating that they did not wish their bodies to be used in such a way. Rather than reducing government involvement to allow market mechanisms to supply desired goods and services, the Spanish government may encourage people in the long run to flee from the compulsory system (through the exemption clause) in fear of government mismanagement of the system. One wonders if this government has contemplated all of the unintended consequence of this dangerous intervention.

MARKETJUSTICE

A limited amount of competition in the market for justice in California has proved to be beneficial to winners and losers alike. An almost forgotten law, placed on the books in 1872, allows litigants to hire a private judge to preside over private proceedings. Private adjudication has proved to be quiet, quick and acceptable even to the losers of the legal battle. The private referees try the cases outside the established state system, but their powers are the same as those of public judges. The proceedings are the same as those of a public trial, including a right to appeal. All participants are awarded the same procedural protections granted by the state system.

Use of a private jurist is preferable to the state apparatus because it is quick, convenient, quiet and of a high quality. The California court system contains backlogs of up to several years, while a case tried privately can commence almost immediately with results, in some cases, in a matter of weeks. Many trials are held entirely at the convenience of the clients and witnesses, with some sessions held during evening hours and some on weekends. These trials also afford litigants more privacy than the state courts, as only the private trial petition and the outcome of the case need to be publicly disseminated. Many attorneys patronising the private judicial network maintain that by being able to select a judge with a proven competence in the specific field in question, the quality of justice dispensed is higher than that of the public counterpart.

Hiliel Chodos, a California attorney who has both won and lost cases under private adjudication has expressed his approval of the system. "I like to use it whenever I can. I have two or three going all the time. It has saved 80% of the delays, 80% of the legal fees and 30% of the aggravation" of cases tried in the state courts.

Some have argued against private justice, maintaining it is a luxury only the rich can afford. This argument is based on the fact that private justice is a good idea, but because it is not easily accessible to the poor, on the grounds of equity we should consider scrapping it. It would seem more sensible, however, rather than to reduce the number of people allowed to benefit from the system, that we should try to increase the availability of private judges thus bringing down their price and making them generally more affordable.

The system should also be expanded to eliminate all restrictions on who can be chosen as adjudicators. State intervention to protect the consumer of "justice" only reduces the number of jurists on the market, thus increasing their market price and reducing variety. Such protection is clearly unnecessary, as the two parties to the dispute need only to agree on an adjudicator. Should a judge be incapable of dispensing a fair decision, either the plaintiff or defendant can veto her selection.

Even as it stands, use of private courts has wider applicability than is generally understood. The speed with which a case can be dispensed will increase the attractiveness of private courts over time as delays in state court systems continue to lengthen.

The problem of finding a mutually acceptable judge and the difficulty that one side may actually not want to come to court soon would often be outweighed by the quality of the private system, resulting in great part from the certainty of judge selection which allows for the hiring of judges with special expertise.

Free Life