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Introduction

James D. Heiple Hon.
Justice of the Supreme Court of Illinois

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Honorable James D. Heiple,[*]
Justice of the Supreme Court of Illinois

I am honored to introduce this Judicial Conference Symposium Issue of the *Loyola University Chicago Law Journal.* I am confident that the articles contained in this issue will, as in years past, provide judges, practitioners, and scholars with a valuable source of information about Illinois law.

The timely and insightful contributions to this issue written by my colleagues on the Illinois bench have reminded me of the important role the judiciary plays in our system of government, and of the necessity of preserving that role. I therefore desire to direct these introductory remarks to the topic of judicial independence.

As every American schoolchild learns, governments in this country are composed of three separate branches. In spite of this, one rarely hears talk of "legislative independence" or "executive independence." Yet the need for judicial independence is a common subject of legal,

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[*] Justice Heiple graduated with a Bachelor of Science Degree from Bradley University in June, 1955, with a Juris Doctor Degree from the University of Louisville College of Law in June, 1957, and received the Master of Laws Degree from the University of Virginia in 1988. Justice Heiple has written and had published a variety of articles in professional and other journals, including the National Bar Examiner. His thesis on the history of Legal Education and Admission to the Bar appeared in the Southern Illinois University Law Journal.

After graduating from law school, Justice Heiple joined his father and brother in the family law firm of Heiple and Heiple, where he engaged in the general practice of law with offices in Washington, D.C., and Pekin, Illinois. While in general law practice, he also served as an Appellate Law Clerk, as a Public Defender, and as a Special Master in Chancery.

Justice Heiple was elected to the Illinois Circuit Court in 1970. In 1980, he was elected Justice of the Illinois Appellate Court. In 1985, and again in 1990, he served as Presiding Justice of the Third District Appellate Court. In 1990, he was elected Justice of the Illinois Supreme Court where he presently serves.

Throughout his professional career Justice Heiple has remained an active member of the community. He has been a member of numerous civic groups and local organizations, including positions as Director of the Pekin Kiwanis Club, President of the Administrative Board of Grace United Methodist Church of Pekin, and Executive Board member as well as a neighborhood counselor for the Boy Scouts of America. He has been sought after as a public speaker and has given the laymen's sermon in a number of Illinois churches. He has appeared before a wide variety of professional, church, and civic groups.

political, and academic discourse, giving rise to the following question: What is it about the nature of the judiciary which so demands independence?

A useful starting point in answering this question is President John Adams's declaration that the United States is "a government of laws, and not of men."[1] Among this country's founders were many who had experienced firsthand the oppression of arbitrary rulers. These earliest Americans desired to create a regime which would be at once strong enough to govern effectively and yet restrained in its powers. Simply put, they sought to implement the rule of law—and to do so more fully and completely than ever before in human history.

Drawing upon a rich Enlightenment tradition of political theory, the founders constructed a unique system which divided governmental powers between different branches. At the heart of this arrangement is the legislature, constituted to ensure that the will of the people dictates the laws by which society is governed. Similarly, the executive is also made dependent on popular will, in order to guarantee the people a continual voice in the administration of the laws. With respect to the interpretation of the laws, however, and their application to specific cases, the founders had quite different concerns.

In *The Federalist*, Publius contended that the greatest disadvantage of republican governments is their susceptibility to domination by an overbearing majority, or *faction*.[2] Precisely because the legislative and executive branches are controlled by the popular will of transitory majorities, there is a constant risk that those branches will employ governmental power to oppress people in the minority, or to impair the interests of society as a whole. The founders believed that arbitrary, tyrannical rule could arise from democracies as well as despots.

To alleviate this danger, the founders intentionally insulated the judicial function from popular control. Once selected, judges are to hold office nearly indefinitely. In addition, their salaries may not be reduced while in office.[3] Although such provisions alarmed some critics who were familiar with the abuses of monarchy, the founders assured them that the judiciary presents no threat of tyranny because it is the "least dangerous" branch of government.[4] While the legislature

1. Novanglus Papers, No. 7, BOSTON GAZETTE, 1774 (quoted in FAMOUS QUOTATIONS 521 (John Bartlett ed., 16th ed. 1992)).

2. *See* THE FEDERALIST NO. 10 (James Madison).

3. In Illinois, our constitution also includes provisions which prevent laws abolishing a judgeship or altering a judicial district's boundaries from taking effect during the tenure of a sitting judge. ILL. CONST. arts. XI, XII.

4. THE FEDERALIST NO. 78, at 465-66 (Alexander Hamilton) (Clinton Rossiter ed.,

controls the power of the purse and the executive wields the sword, the judicial branch governs only by the force of the ideas contained in its judgments.

The advantages of judicial independence are numerous, but I wish to focus here on two which I believe are central to its genius: first, the preservation of limited government; and second, the protection of individual rights.

The American experiment in democracy has succeeded largely because we have adhered to the founder's original goal to be governed by written laws. The most fundamental of these laws are the constitutions which divide and assign powers among the various branches of government. For our democracy to continue to function properly, these divisions must be respected. As demonstrated in the writings of the founders, the judiciary is the appropriate body to enforce this separation of powers. Alexander Hamilton observed that limitations upon the powers of government can be preserved only through the courts, because the more popularly-controlled branches continually attempt to enlarge their own spheres of influence.[5] In a similar vein, Thomas Jefferson argued that

> [t]he dignity and stability of government in all its branches . . . depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent [of] both, so that it may be a check upon both . . .[6]

In addition to maintaining the constitutional structure of government, the judiciary is also the only branch which can be trusted to fairly interpret and enforce legislative enactments. The insulation of judges from popular passions allows them to persist in impartial application of the laws even when this compels a result disagreeable to public opinion. Learned Hand noted that "it is of critical consequence that [the laws] should be loyally enforced until they are amended by the same process which made them."[7] Since the judiciary exercises neither force nor will, but instead only judgment,[8] it is best able to preserve the proper roles of government.

1961).

5. *Id.* at 466, 469-70.

6. Thomas Jefferson, Letter to George Wythe (June 1776), *in* 1 PAPERS OF THOMAS JEFFERSON 410 (Julian P. Boyd ed., 1950).

7. Learned Hand (quoted in A TREASURY OF LEGAL QUOTATIONS 79 (Paul C. Cook ed. 1961)).

8. THE FEDERALIST NO. 78, at 465.

Second, judicial independence is the cornerstone of individual liberty. Hamilton wrote that "the independence of the judges" is essential to "guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men . . . sometimes disseminate among the people themselves, and which . . . occasion dangerous innovations in the government, and serious oppressions of the minor party in the community."[9] Protecting the rights of minorities is never a popular task, and only a truly independent judiciary can accomplish it regularly. But without this first line of defense, the liberty of all members of society is endangered. As U.S. Supreme Court Justice Joseph Story warned nearly two centuries ago:

> Laws, however wholesome or necessary, are frequently the objects of temporary aversion and popular odium, and sometimes of popular resistance. Nothing is more facile in republics than for demagogues, under artful pretences, to stir up combinations against the regular exercise of authority. Their selfish purposes are too often interrupted by the firmness and independence of upright magistrates, not to make them at all times hostile to a power which rebukes and an impartiality which condemns them. The judiciary, as the weakest point in the Constitution on which to make an attack, is therefore constantly that to which they direct their assaults; and a triumph here, aided by any momentary popular encouragement, achieves a lasting victory over the Constitution itself. Hence, in republics, those who are to profit by public commotions or the prevalence of factions, are always the enemies of a regular and independent administration of justice. They spread all sorts of delusion, in order to mislead the public mind and excite the public prejudices. They know full well that without the aid of the people, their schemes must prove abortive; and they therefore employ every art to undermine the public confidence, and to make the people the instruments of subverting their own rights and liberties.[10]

Thankfully, Justice Story's scenario has been the exception rather than the rule throughout most of American history. Nevertheless, his words continue to resonate, especially in light of the heightened influence of the modern-day media, and stand as a warning to citizens to be ever mindful of safeguarding judicial independence in order to preserve their freedoms.

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9. *Id.* at 469.

10. JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 424 (Melville M. Bigelow ed., 1891).

In conclusion, may I express my admiration and appreciation for each of my colleagues on the bench who endeavors to fulfill his or her unique constitutional role faithfully, without public fanfare or acclaim. The work of a conscientious judge is seldom easy and often lonely; but due to its crucial necessity in our system of government, it can also be deeply rewarding. Again, Justice Story:

> [Judges] may sometimes find the other departments [of government] combined in hostility against the judicial; and even the people for a while, under the influence of party spirit and turbulent factions, ready to abandon them to their fate. Few men possess the firmness to resist the torrent of popular opinion; or are content to sacrifice present ease and public favor in order to earn the slow rewards of a conscientious discharge of duty; the sure but distant gratitude of the people; and the severe but enlightened award of posterity.[11]

11. *Id.* at 430.