
JUDICIAL INDEPENDENCE AND ACCOUNTABILITY SYMPOSIUM

FOREWORD

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The University of Southern California Law School has enjoyed a close relationship with the nation's judiciary throughout its 100-year history. Indeed, the Law School was founded in a judge's chambers where thirty-six law apprentices met to organize the Los Angeles Law School Students Association in 1896. Two years later in 1898, with support from the bench and the bar, the Los Angeles Law School (the immediate predecessor to USC Law School) was incorporated. Leading jurists and lawyers comprised the board of directors of the area's first law school. Since then, the state and federal bench have been an integral part of the Law School in at least three aspects: judges who have served as trustees and counselors of the Law School; judges who have served as faculty; and, most prominently, USC Law School graduates who have risen to the bench in both state and federal courts. To date, approximately 300 of our graduates serve or have served in the judiciary throughout the country.

Given these historic connections to the bench, we are pleased to celebrate our century-long relationship with the legal profession through a thoughtful look at an issue of enduring importance: the proper balance of judicial independence and judicial accountability. The last decade has seen intense criticism of rulings by some federal judges with threats of impeachment and proposals to amend the Constitution to eliminate life tenure for the federal judiciary. At the state level, a number of incumbents have been defeated in retention elections and overall the costs of judicial campaigns have increased enormously. These events raise serious concerns about the independence of the judiciary. At the same time, these events raise legitimate questions about the responsibility of judges to their limited

roles in our democratic systems and of their accountability when, arguably, they exceed the limits of their authority. In a governmental system that has an elected judiciary, what are the legitimate criteria for deciding to cast a ballot in favor of a judicial candidate?

Our investigation of the crucial balance between legitimate independence and appropriate accountability took form as a two-day symposium held on the campus of the University of Southern California. The Judicial Independence and Accountability Symposium brought together some of the country's finest scholars and judges to examine whether a serious threat to judicial independence exists and whether there is adequate assurance of judicial accountability. Five panels considered the history of the concept of judicial independence and threats to it, the requirements of judicial responsibility, legitimate methods for assuring judicial accountability, and a research agenda for issues of judicial independence and accountability for the future. As the articles in this issue reflect, the scholars participating in these panels addressed the inquiries with a broad and varied perspective.

The two concepts, judicial independence and accountability, are of course linked. One way of viewing the relationship is that judicial independence is the right of judges to be free from inappropriate control by others in the exercise of judicial decisionmaking and, conversely, that judicial accountability is the appropriate control by others of that decisionmaking. Three terms become central in this description: what is "control," who are the "others" who may exercise it, and what control is "appropriate."

There are several ways in which someone might exercise varying degrees of "control" over judicial decisionmaking. The first involves choosing who the judges will be, for selecting judges based on their specific approach to decisionmaking is an exercise of some control over that decisionmaking. The choice may be exercised in the initial selection of judges, in the retention of judges at the conclusion of their terms, and in the removal of judges during their term of office. At each stage, the decision for or against a judge may exert different degrees of control.

Control can also be exercised more strongly by setting the rules for judicial action, by changing the results of judicial decisions already rendered, and, less forcefully, by affecting the resources available for judicial functioning. The "others" who might exercise these varying degrees of control in one or another of these instances include the executive and leg-

islative branches of government, the courts themselves, the electorate and, perhaps, “public opinion.”

Of course, the central inquiry is what is an “inappropriate” degree of control and hence a violation of judicial independence, and what is an “appropriate” amount of control and hence a legitimate instance of ensuring judicial accountability. Over the course of the symposium, scholars and legal commentators focused on the criteria and their application in varying contexts to determine the answers to this critical inquiry.

At the outset, two distinctions seem important. First, there may be an important difference between controlling the decisionmaking of a particular judge and controlling the decisionmaking of the judiciary as a whole. Thus, for example, an appellate court usually may appropriately order an inferior court to change the result in a particular case. This is strong “control” exerted within the judicial branch. We would probably reach a different conclusion if a legislative branch were to try to achieve the same result. This would be strong “control” of a judge from outside the judicial branch. This is not to say, however, that individual judges are always subject to less control from without rather than from within the judicial branch. For example, the legislature may have the sole power to remove the judge from office for, say, accepting bribes. Sometimes, the appellate court and the legislature may share control of the judge, since either may appropriately change a common law decision rule announced by inferior courts.

Second, the answer to the “appropriateness” inquiry will often be different for federal and state courts. The federal Constitution of course provides restrictions on some methods of control, such as salary reductions and removal from office. And the electorate has no specified role in control of the judiciary. In the states, the situations are vastly different and variable, with the constitutions making removal easier and the electorate arguably given specified role in some control of judicial decisionmaking through the electoral process.

In my view, one important strength of the articles in this symposium is their close attention to these two distinctions. There is a recognition of the difference between the independence of a judge and the independence of the judiciary in general. And, while there is appropriate treatment of the independence and accountability of the federal judiciary, there is also significant attention to the often neglected state judiciary. This bodes well for a symposium that indeed explores the balance between independence and accountability in its full complexity.

Complimenting the published Articles in this issue, the Law School has also established a Website for the symposium. Co-sponsored by the Coalition for Justice, the Law School's Judicial Independence and Accountability Website makes the entire proceedings available, including the authors presentation, commentators remarks, and audience members' questions. The address is: www.usc.edu/dept/law/symposia/judicial or may be reached through a link from the Law Schools homepage at www.usc.edu/dept/law/.