

Separation of Powers Doctrine

Judicial Independence

An Element of

Tribal Sovereignty??

U.S. Constitution

- The U.S. Constitution contains no provision explicitly declaring that the powers of the three branches of the federal government shall be separated.
- The first article of the Constitution says "ALL legislative powers...shall be vested in a Congress." The second article vests "the executive power...in a President." The third article places the "judicial power of the United States in one Supreme Court" and "in such inferior Courts as the Congress...may establish

Separation of powers serves several goals.

- Separation prevents concentration of power (seen as the root of tyranny) and provides each branch with weapons to fight off encroachment by the other two branches. As James Madison argued in the Federalist Papers (No. 51), "Ambition must be made to counteract ambition." Clearly, our system of separated powers is not designed to maximize efficiency; **it is designed to maximize freedom.**

Judicial independence

- The doctrine that decisions of the judiciary should be impartial and not subject to influence from the other branches of government.
- In most cases, judicial independence is secured by giving judges long, and sometimes lifetime, tenure or making them not easily removable

Two General Distinctions

- There is a distinction between the laws that establish political liberty as it relates to the constitution, and
- Those by which it is established as it relates to the citizen.

Free From Influence

- Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological or political influence.

Two Kinds of Judicial Independence

- Scholars have broken down the general idea of judicial independence into two distinct concepts: decisional independence and institutional independence.
- **Decisional independence** refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law.
- **Institutional independence** describes the separation of the judicial branch from the executive and legislative branches of government.

Specific Threats to its Existence.

- The concept of judicial independence can be more clearly understood in the context of specific threats to its existence.
- These threats include:
- Inappropriate threats of **impeachment** prompted by individual decisions;
- **Political threats** intended to influence a judge's decision in an individual case;
- Public responses to specific decisions that use weighted phrases like "**judicial activism;**"

Specific Threats to its Existence. Cont'd

- **Misleading criticism** of individual decisions, which is compounded by the **prohibition on judicial response**;
- **Poor interbranch relationships** between the judiciary and the tribal council or chairman marked by the lack of communication;
- **Line-item veto authority** that allows appropriations for the judiciary to be used by the politicians in improperly influential ways;

Specific Threats to its Existence.

Cont'd

- Legislative limits on or curtailment of jurisdiction;
- Legislative limits or denial of requests for judicial pay increases or in budget needs.
- Underfunding and workload;
 - ◆ Tribal Judiciary made to look inefficient for political purposes
- Politicization of judicial Elections
- Threatening of judges by special interest groups based on legally correct but politically or socially unpopular decisions;

Crown Jewel

- U.S. Supreme Court Chief Justice William Rehnquist called judicial independence "one of the crown jewels of our system of government."

Stick to the Judicial Ethics Code

- Independent judges decide cases based on the facts and the law and do not sway to the gales of protest from those who would prefer that the law was written differently. Unfortunately, judicial independence has been threatened by those who do not agree with the decisions judges make.

Judicial Ethics and Fortitude

- Whether a decision is a monumental change to the legal climate or a mere routine determination, the independence of the judiciary is carefully preserved by judges willing to stand tall in the face of opposition.

Solutions

- Enact or Judicial Code of Ethics and let your tribal people and tribal leader know that it exists and you will adhere to its principles.
- Educate your tribal constituencies about the role you play as a judge.
- Preserve freedom and provide for law and order and good government based on laws and not the political whim of yourself or other political leaders.

NAICJA

- Stand together as a national group on the need for an independent tribal judiciary and inform the general public that an independent tribal judiciary is an integral part of the inherent right of tribal self governance.
- Inform your tribal leaders about your role and responsibility as a judge.
- Work and Support NAICJA's efforts in this area.