



# 2020 SELECTED STUDENT ESSAYS

## Judicial Independence - Emily Nitschke

One crisp day last spring, my father called me—as all relatives are inevitably bound to do—to ask me legal question that had been bothering him. My father and I had become U.S. Citizens a little over a year previous. I could hear the bewilderment in his voice as he asked me, “Why do judges have political parties?” The weekends my sisters and I spent giving our parents a crash course in US history and civics in preparation for our citizenship exams had not prepared him for this reality.

*Why do judges run for office? Doesn't their party platform affect their decision-making? What about the Supreme Court? I thought that was a different branch of government than the Legislative and the Executive, who are elected?*

The more questions my father asked, the fewer answers I had. As an immigrant to the United States, when I talk to my parents about the American legal system, I am often met with the confused looks of people who were taught about separation of powers on a flashcard, not the resigned understanding of those who have had the privilege to study it in depth for the entirety of their academic careers. In reality, the clean-cut system of checks and balances that my parents learned about as is far more complicated.

An independent judiciary is the last weight-bearing corner of our democracy. An independent judiciary prevents against the tyranny of the majority when it upholds due process and equal protection. An independent judiciary serves as measured hesitation, a voice calling for educated reason and logic. An independent judiciary serves as the last procedural safeguard before we are subject to the whims of policies written by volatile branches of government who are driven by the need to secure a small fragment of swing voters every two, four, or six years. An independent judiciary protects the people from the pain of exposure to partisan policy whiplash. An independent judiciary holds onto the steadfast legal principles upon which America was founded.

American society and the legal profession itself have long revered the judiciary, and for good reason. In their role, judges must embody dignity, respect, honor, reason, and logic. The judiciary must transcend political rhetoric and contemporary malleable ideology. The judiciary is held to a higher standard than that of politicians or government employees: they must set aside their personal biases and refuse the dark allure of power that has plagued men since the beginning of time. In this era of seemingly-insurmountable partisan confirmation battles and vitriolic political discourse, the judiciary is the last hold-out of government the way it should be—a respected institution where due process can rule. An independent judiciary is more important now than ever before.

Judicial independence is essential because it ensures that justice and reason survive political discourse and the often-misinformed public opinion of the day. Most importantly, judicial independence is essential so that immigrant fathers everywhere hoping to understand the American government can pass their citizenship exams.

Isaac López

### **The Important Relationship Between Judicial Independence and Judicial Legitimacy**

John Locke once said that the right to appear in front of independent judges is the heart of a civilized society; those societies without such are still “in state of nature.” Much discussion concerning the importance of an independent judiciary primarily focuses on the salient issue of checks and balances. Alexander Hamilton wrote in the Federalist Papers No. 78 that “there is no liberty, if the power of judging be not separated from the legislative and executive powers.” Though the foundation of an independent judiciary may be checks and balances, judiciary legitimacy is an important element to an independent judiciary. This short essay will primarily focus on the Supreme Court.

There was a time when the Supreme Court did not have validity, legitimacy, nor power. It was not until Chief Justice Marshall wrote in *Marbury v. Madison* that “it is emphatically the duty of the Judicial Department to say what the law is.” Chief Justice Marshall effectively created judicial review as we know it today. Aside from trial and appeal courts, the Supreme Court and the judiciary often lacks measures to enforce their rulings. For example, President Andrew Jackson declined to accept the Supreme Court’s ruling in *Worcester v. Georgia*. Instead, President Jackson continued to remove Native Americans from their land. President Jackson was known to have said something to the effect of “John Marshall has made his decision; now let him enforce it.” For the two other branches of government and the citizens to abide by court rulings, institutional legitimacy is vital. Therefore, it is crucial to have an independent judiciary to promote judicial legitimacy.

If one were to peruse the news, it would not take you long to see a reoccurring theme. This year’s presidential election is contentious, with one candidate raising issues of election legitimacy. It may be that this year’s election travels through the judicial system. This can raise legitimacy issues that are similar to those present in *Bush v. Gore*. A tie-breaking fifth vote effectively stopped the recount in Florida. After this decision, the Supreme Court’s legitimacy was in question. The question? Is the judiciary no longer independent? Justice Marshall stated that it is the duty of the Court to say what the *law* is. Instead, the Supreme Court in *Bush v. Gore* answered a political question, one that is barred by the political question doctrine. The Court was no longer independent but engaged in politics concerning another branch of government, which led to legitimacy questions.

It is the province of the judiciary to say what the law is. To enforce such decisions, the judiciary needs to be viewed as a legitimate branch of the government. Therefore, to promote judiciary legitimacy and enforcement, it is necessary to have an independent judiciary.

## **The Neutral Judiciary**

As the political landscape continues to imbue and entwine itself with the judiciary processes, it becomes incredibly imperative to ensure that the judiciary maintains its independence. Furthermore, in this metamorphosis, the judiciary has begun to arise at the nexus of political vitriol and the two-party system. Legality is a matter of power – and because of this, ensuring that the judiciary preserves its autonomy is all the more vital. Imbedding the judiciary with the complexities of politics risks not just the judiciary's composition and neutrality, but it also puts at risk the entire governmental system of the United States. The judiciary exists as an essential part of the checks and balances system that carefully preserves the very young democracy of the United States.

In light of the necessity of impartiality within the judiciary, it cannot be ignored that this presidential administration has toed the line and continued to push the norms and mores of a standard presidency towards a dark path of fascism and tyranny. This has been perpetuated by the comingling and entwined relationship that has been established between the legislative branch of the government and the executive—a relationship which also risks the careful system of checks and balances. When the legislative branch and the executive branch of the federal government work in a symbiotic relationship, rather than merely in cooperative ways, the judiciary is maligned and further politicized by the whims of elected individuals.

The importance of the neutrality of the judiciary, particularly in these fraught and caustically political times, intensifies. Preserving the lifetimes of work that individuals like Justice Thurgood Marshall or Justice Ruth Bader Ginsburg accomplished via an objective and unbiased judiciary is part of the very fundamentals that are essential to the judiciary. This is not to say that the individual judges themselves cannot hold political views—of course they may and should hold politicized views of the world via the multidimensional identities they possess. However, judges and other judiciary officials should not let their political, religious, or moral beliefs strictly dictate how the law is decided.

Ultimately, the judiciary is the last stronghold against institutions seeking to increase their power. Judges make an oath to uphold the Constitution – a piece of paper with tremendous significance to the very foundation of this country. When the judiciary is permeated with political, religious or personal beliefs, the very core of that oath begins to erode. Thus, the importance of ensuring that the judiciary is wholly independent becomes all the more imperative—the careful balance of powers depends on this judicial independence. Letting personal beliefs color judicial perceptions contributes to injustice—injustice which is detrimental to the people. Judges have an obligation to provide justice and they cannot let personal morals or beliefs affect their decision-making ability. When the scales of justice start to tip one way or the other—because of any litany of beliefs—the very foundation of the governmental system is put at risk, and with it, the fundamental system of justice.

## **A Name on A Piece of Paper - Jacques Chouinard**

In 1903, Jackson W. Giles filed a lawsuit alleging that the board of registrars of Montgomery County, Alabama had engaged in widespread disenfranchisement of Black voters. The case, *Giles v. Harris*, eventually landed on the desk of Supreme Court Justice Oliver Wendell Holmes, a Union army veteran who fought in the fiercest battles of the Civil War.

Holmes refused to fashion a remedy that would protect Mr. Giles's voting rights. Holmes predicted that the Montgomery County registrars would ignore a contrary ruling, conceding the Court's authority in the face of Southern intransigence. In a frank admission of judicial impotence, Holmes wrote, "If the conspiracy and the intent exist, a name on a piece of paper will not defeat them." With that, the Court excluded Jackson Giles and thousands of Black Alabamians from another piece of paper: Montgomery County's voter roll.

Holmes's opinion in *Giles* admits a rarely spoken truth in American law: the judiciary depends on the other branches of government to enforce its rulings. Holmes refused to exercise the Court's power when it became obvious that Montgomery County would ignore a judicial order curbing racist voter restrictions. That Montgomery County was engaged in a campaign to deny Black people the vote in post-Reconstruction Alabama made no difference to Holmes; tacit surrender of the Court's independence was preferable to the emasculation of an unenforced holding. Holmes implicitly endorsed Southern oppression; the Civil War veteran would not sign a piece of paper that white Southerners would ignore.

Sixty years later, Justice William Brennan was assigned the majority opinion in *Baker v. Carr*, another voting rights case. The facts were depressingly familiar. A Southern state—Tennessee this time—had refused to reapportion its legislative districts for sixty years, even as predominantly Black districts grew in population. The result? Black people in urban districts had far less political power than rural whites. Disenfranchisement was alive and well in Tennessee.

Unlike Holmes, Brennan recognized the value of judicial authority. Words on a page carry significant weight when authored by a Justice of the Supreme Court, even if those words might not be enforced. Brennan was acutely aware of the Court's power to influence not only legal thought, but the lives of the nation's most vulnerable citizens. Brennan confronted voter disenfranchisement head on, despite the political questions inherent in redistricting disputes. Baker's holding restrained the impulses of racist Tennessee legislators, using the Constitution to defend individual liberty from Southern oppression. In stark contrast with Holmes, Brennan concluded that voter disenfranchisement could be remedied by an independent judiciary. The Court's authority prevailed: Baker was enforced, and Tennessee's legislative districts were redrawn.

Americans deserve a judiciary that protects their rights—that respects their inherent human dignity. Judges must recognize that people are more than names on a page. The judiciary must possess the moral clarity to acknowledge its own power, and more importantly, its own independence.