

What Is Judicial Independence?

Handout 1

Independent Courts in the U.S.

We inherited our system of judicial independence from Great Britain. In the 1600s citizens spoke out against the dependence of judges on the monarchy. The king or queen could assign judges to the bench and then remove them summarily if they did not represent the sovereign's interests. These complaints resulted in the Bill of Rights of 1689, which provided English judges a measure of constitutional protection, including the promise that they could serve during "good behavior." This is a term later included in Article III in our own Constitution, which protects judges from being removed at the political whims of executive or legislative officeholders.

Though judges in Britain developed some independence, their counterparts in the American colonies remained essentially Crown officers, whose duty was to enforce British policies and law, leading to frequent conflicts with the colonists. This led Americans to embrace the idea of the jury trial, which took some power away from these not-so-independent judges. When independence came, the framers of the Constitution worked to create a third branch of government that was relatively independent of the executive and the legislative branches.

In Article III, Section I, the U.S. Constitution provides, "The Judges, both of the supreme and inferior Courts, shall hold Office during good Behaviour." Section 1 also states, "The Judges... shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." These provisions ensure lifetime appointments for federal judges, making it difficult to remove them except through cumbersome impeachment proceedings. They also prevent Congress from lowering their salaries during their terms of office.

Those who criticize the life appointments of federal judges say that this system limits accountability. But the framers of the Constitution, in giving the power of the purse to Congress, provided for some oversight of the judiciary by the legislative branch. This oversight is frequently exercised through the Congressional budget process. The federal judiciary must submit a proposed budget each year to Congress, which frequently holds hearings to inquire into issues such as how the courts are using their money, how many cases they have heard in the past year, and how many judges are really needed.