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Judicial Financial Autonomy and Inherent Power

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NOTE

JUDICIAL FINANCIAL AUTONOMY AND INHERENT POWER

In 1965 the National Conference of Court Administrators and Conference of Chief Justices adopted a statement of principles asserting the need for the financial independence of courts.[1] Judicial finance, the statement concluded, "should be exercised free of interference by agents of the executive branch of government, in the same manner that the executive and legislative branches administer the funds appropriated for their internal operations."[2] Growing pressure upon court services, inadequate appropriations, and slow and expensive litigation have combined to spur judicial demands for the independent control of internal fiscal management as well as of appropriations to the judiciary. While centralizing judicial administration and encouraging internal economy may increase the resources available to courts, substantial improvements in resulting services are ultimately dependent upon the amount of appropriations.[3] The apathy, hostility, or conservatism of the legislature

1 National Conference of Court Administrators and Conference of Chief Justices, *Statement of Principles: The Need for Independence in Judicial Administration*, 50 J. AM. JUD. SOC'Y 129 (1966). Similar principles were adopted by the First Judicial Conference of the Americas, Justice William O. Douglas representing the United States, in May 1965. *See Judicial Independence is Keynote of Judicial Conference of the Americas*, 49 J. AM. JUD. SOC'Y 44 (1965).

2 National Conference of Court Administrators and Conference of Chief Justices, *supra* note 1, at 130.

> Only through the responsible exercise of an unhampered authority to manage their own fiscal affairs can the courts successfully keep pace with the expanding demands for effective judicial services in our modern society.
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> Within the limits set by the funds made generally available by law, courts should have full responsibility for supervising the employees upon whom they must rely to administer the business of the courts. Thus, the independent authority of courts to hire and fire their employees, to fix and adjust their salaries, and to assign them duties should not be subject to the approval or control of any non-judicial agency.

Id.

3 The need for centralized judicial administration has been widely recognized and the practice has been adopted by 37 states and by the federal government. COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 1970-1971, at 118 (1971); Burger, *Deferred Maintenance of Judicial Machinery*, 43 N.Y.S.B.J. 383 (1971); Nixon, *To Improve the Process of Justice*, 43 N.Y.S.B.J. 312 (1971).

Occasionally those who call for judicial unity appear to be less concerned with efficient administration and economy than with effective bargaining position vis-à-vis the other branches:

> The executive and legislative branches, by their inherent structure, have always been well organized and fully capable of protecting and advancing their interests.

and executive[4] have in the past induced the courts to exercise their inherent power[5] to compel those recalcitrant branches to allocate the funds required for needed court services.[6] Extended application of this coercive aspect of judicial independence may provide a solution to what some legal scholars see as a potential crisis in judicial finance and administration.[7]

> The inherent nature of the judicial branch, with only its connecting thread of appellate review, does not give sufficient form or definition to clearly establish an equal and coordinate branch of government. . . . The judicial branch of government must have some administrative unity in order to better be able to assume its own responsibilities in relation to such things as personnel and fiscal matters. In so eliminating the unwarranted encroachment of nonjudicial agencies, a stronger and more independent judiciary will be created and the benefits of such will flow to all.

COUNCIL OF STATE GOVERNMENTS, PROCEEDINGS OF THE 19TH ANNUAL MEETING OF THE CONFERENCE OF CHIEF JUSTICES 63 (1967).

[4] Testimony at a recent budget hearing before the Philadelphia City Council reflects the problem: "The Judiciary can no longer permit its rate of progress and efficiency to be measured by a non-responsive and antagonistic executive who completely misunderstands the role and function of a separate and distinct branch of government." Testimony of Judge Vincent A. Carroll before the Philadelphia City Council, May 4, 1970, *quoted in* Brief for Appellant at 82, Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971) (on file at the *Cornell Law Review*).

[5] Inherent power is that power not expressly provided for in the constitution of government but which may be exercised by a branch of government to protect itself in the performance of its duties. The most important use of inherent power for the judicial branch is that allowing the courts to punish for contempt; other uses include the ability to honor letters rogatory (*see Ex parte* Taylor, 110 Tex. 331, 220 S.W. 74 (1920)), to grant bail (*see* State *ex rel.* Syverson v. Foster, 84 Wash. 58, 146 P. 169 (1915)), to control photography in court (*see Ex parte* Sturm, 152 Md. 114, 136 A. 312 (1927)), and to appoint counsel for a criminal defendant (*see* Powell v. Alabama, 287 U.S. 45 (1932)). *See also In re* Surcharge of County Comm'rs, 12 Pa. D. & C. 471, 478-80 (C.P. Lackawanna County 1929). The inherent power doctrine has as its basis the concept of separation of powers. *See* notes 54-58 and accompanying text *infra*.

[6] *See, e.g.*, Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971).

The sources of disagreement are complex, but one explanation may be an organizational paradox:

> Financing and staffing of courts are wrought [*sic*] with conflict—conflict between principles of public administration that hold that the tax levying body should control the agency it supports, and American political theory that holds that courts must be independent of the legislative and executive branches.

Gallas, *The Planning Function of the Court Administrator*, 50 J. AM. JUD. SOC'Y 268, 269 (1967).

[7] The crisis extends not only to court congestion and delay but also to the competency and number of court personnel and judges. For discussions of the crisis, see PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 80-90 (1967); Burger, *The State of the Judiciary*, 56 A.B.A.J. 929 (1970); Twenty-Seventh American Assembly, *The Courts, the Public and the Law Explosion*, 49 J. AM. JUD. SOC'Y 16 (1965).

I

STANDARDS IN THE USE OF INHERENT POWER

A. *Background*

Under state constitutional provisions, the executive generally proposes and administers the fiscal policies of government while the legislature raises and allocates public funds.[8] Through either a sense of comity or a recognition of public needs, the legislature and executive generally cooperate with the judiciary to meet the courts' anticipated costs.[9] This cooperation is not always possible. Political and economic considerations often dictate that the comparatively unassertive requests of the judiciary be neglected.[10]

When the budget proposal of the judiciary exceeds the allotment acceptable to the other branches,[11] judges usually rely on political pressure and compromise rather than confrontation to preserve the integrity of their proposals.[12] Historically, use of coercive power has

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8 *See, e.g.*, N.Y. CONST. art. VII, § 1.

9 For an exhaustive survey of the budgetary procedure involving judicial costs in state and local government, see INSTITUTE OF JUDICIAL ADMINISTRATION, STATE AND LOCAL FINANCING OF THE COURTS (Tent. Rep. 1969). The judicial branch generally limits its demands whenever possible. *Id.* at 2.

10 As a practical matter, judicial budgets for court operations are relatively inconsequential in amount, ranging, for example, from .04% of the 1966 Pennsylvania state budget to 1.84% of the Counecticut budget. *Id.* at 17. By comparison, the federal government spent approximately .06% of its total budget on the federal judicial system in the same year. Saari, *Open Doors to Justice—An Overview of Financing Justice in America*, 50 J. AM. JUD. SOC'Y 296 (1967). Complicating factors in assessing the amount of judicial budgets include the practice of splitting fiscal responsibility between local and state governments and the use of income from fees and fines to supplement appropriations. INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 9, at 3-4.

11 In almost all states the judicial budget proposal is submitted to the executive and legislative branches for review, modification, and eventual incorporation into the overall state budget. In over 30 states the executive may make substantial revisions in the budget prior to submission to the legislative branch. INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 9, at 67-71.

An important aspect of court finance is the division of support between state and local governments. In approximately one half of the states judicial expenses are financed locally. In ten states (California, Louisiana, Maine, Mississippi, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Virginia) expenses are shared between local and state governments. *Id.* at 30-31. In New York, for example, the state pays approximately 20%, New York City 45%, and local jurisdictions the balance of total judicial costs for the state. This division of fiscal responsibility has paralyzed courts where local communities have refused to shoulder the increasing cost of judicial administration. NATIONAL CONFERENCE OF COURT ADMINISTRATIVE OFFICERS, SUMMARY OF THE FOURTEENTH ANNUAL MEETING 3 (1968).

12 Illustrative of such political pressures was the recent enactment by the Administrative Board of the Judicial Conference of the State of New York of rules limiting trial

been confined to minor, if necessary, matters of court administration.[13] Rarely have courts utilized their inherent power to compel appropriation of funds for judicial administration;[14] resort to this tactic has been

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delay. 22 N.Y.C.R.R. § 29 (proposed eff. date May 1, 1972). In substance the rules provided that all criminal defendants being held in custody pending trial, except those accused of homicide or for whom good cause is shown for continued detention, would be released on bail or on their own recognizance if they were not brought to trial within 90 days. Moreover, if the defendant other than one accused of homicide were not brought to trial within six months from the date of his arrest, the prosecution would be dismissed with prejudice unless an extension was granted for good cause. Chief Judge Stanley H. Fuld recognized the pressures this plan would place on the fiscal bodies of the state:

> The Administrative Board is thoroughly aware of the fact that, if these rules are to prove effective, the wherewithal for additional facilities, personnel and services, so long denied to the courts and the other agencies involved will have to be made available by those having control of the purse strings.

Judicial Conference of the State of New York, Press Release, April 30, 1970, at 3 (on file at the *Cornell Law Review*).

These rules never came into effect. Before May 1, 1972, the New York legislature enacted its own "speedy trial" plan. Ch. 184 [1972] N.Y. Laws 398. This plan has considerably weaker provisions than the Judicial Conference plan.

[13] *See, e.g.*, Powers v. Isley, 66 Ariz. 94, 183 P.2d 380 (1947) (compelling resources for court reporters); Noble County Council v. State *ex rel.* Fifer, 234 Ind. 172, 125 N.E.2d 709 (1955) (probation officers); Knox County Council v. State *ex rel.* McCormick, 217 Ind. 493, 29 N.E.2d 405 (1940) (lawyer); Dunn v. State *ex rel.* Corydon, 204 Ind. 390, 184 N.E. 535 (1933) (page); Board of Comm'rs v. Gwin, 136 Ind. 562, 36 N.E. 237 (1894) (repairs); Board of Comm'rs v. Stout, 136 Ind. 53, 35 N.E. 683 (1893) (elevator); *In re* Appointment of Clerk, 297 S.W.2d 764 (Ky. Ct. App. 1957) (clerk); Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960) (clerk); State *ex rel.* Kitzmeyer v. Davis, 26 Nev. 373, 68 P. 689 (1902) (courtroom chairs and carpet); State *ex rel.* Finley v. Pfeiffer, 163 Ohio St. 149, 126 N.E.2d 57 (1955) (court rooms); Bar Ass'n v. County of Marion, 162 Ohio St. 345, 123 N.E.2d 521 (1954) (elevator); *In re* Court Room, 148 Wis. 109, 134 N.W. 490 (1912) (court facilities); *In re* Janitor of Supreme Court, 35 Wis. 410 (1874) (janitor).

Even in the recent cases, use of the inherent power has been limited to relatively conservative demands for funds for continuing functions. *See* notes 21-36 and accompanying text *infra*. The evolving standards for the use of inherent power may, however, lead to a much more aggressive judicial stance in the future. *See* notes 57-63 and accompanying text *infra*.

[14] The very conception of inherent power [in the court] carries with it the implication that its use is for occasions not provided for by established methods .... When, however, these methods fail and the court shall determine that by observing them the assistance necessary for the due and effective exercise of its own functions cannot be had, or when an emergency arises which the established methods cannot or do not instantly meet, then and not until then does occasion arise for the exercise of the inherent power.

State *ex rel.* Hillis v. Sullivan, 48 Mont. 320, 329, 137 P. 392, 395 (1913). *See also* Los Angeles County v. Superior Court, 93 Cal. 380, 28 P. 1062 (1892); Leahey v. Farrell, 362 Pa. 52, 66 A.2d 577 (1949).

Some observers are more candid in their explanation of the hesitancy to use inherent power: "[F]ew lower court judges have the desire or the courage to order other local officials to provide necessary funds, although a few have done so. Political reasons related to job tenure account for reticence upon the part of most." JUDICIAL RESEARCH FOUNDATION, INC., STRUGGLE FOR EQUAL JUSTICE 22 (A. Logan ed. 1969).

eschewed whenever other grounds for compelling appropriations have been available.[15] No court, however, has denied its inherent power to compel funds. The issue is principally the extent of the power rather than its existence. Since most litigation concerning judicial appropriations has originated at the municipal level, appellate forums have assumed increased significance as much needed arbiters of intergovernmental conflict.[16] Rarely confronting state legislatures and executives in litigation concerning their own budgets,[17] state appellate courts may profoundly affect the fiscal appropriations of inferior judicial units without being challenged by a co-equal branch.

The courts have advanced several standards establishing the limits of judicial discretion in the use of inherent power. These standards range from a basically defensive posture,[18] which seeks to preserve only the essential elements of judicial administration, to an offensive stance, which encourages more extensive judicial independence in expanding and developing necessary and reasonable court programs.[19] While none of these standards is subject to precise definition, all reflect the courts' understanding of their constitutional mandate and concomitant obligation to protect it.[20]

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15 While the remedy of coercing appropriations from intransigent legislators or executives can be explained in terms of inherent judicial power, courts have sometimes found more explicit authority in statutes or state constitutions for the proposition that they were *entitled* to the funds. *See, e.g.*, State *ex rel.* Foster v. Board of County Comm'rs, 16 Ohio St. 2d 89, 242 N.E.2d 884 (1968) (statute requiring commissioners to "appropriate such . . . money each year as will meet all the administrative expense of the juvenile court" and placing determination of that amount in sound discretion of court); Carlson v. State *ex rel.* Stodola, 247 Ind. 631, 220 N.E.2d 532 (1966) (state constitutional provision that "[j]ustice shall be administered freely, and without purchase; completely and without denial; speedily and without delay" held to invalidate statute reposing veto of judicial budget in local council).

16 The problem of an impartial forum, arising from the seeming conflict of interest of the judicial branch acting as a judge for its own cause, has been countered by selecting judges from outside the area of conflict. This approach does not resolve the basic problem, but, as a practical matter, it does provide a tribunal in which the matter can be heard and conclusively determined. For the legal arguments on both sides of the issue, see Brief for Appellant, App. II, at 6-12, Brief for Appellee, App. III, at 17-30, Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971) (on file at the *Cornell Law Review*).

17 For examples of litigation between co-equal branches at the highest state level, see State *ex rel.* Schneider v. Cunningham, 39 Mont. 165, 101 P. 962 (1909) (payment of wages to supreme court stenographer denied by legislature); State *ex rel.* Kitzmeyer v. Davis, 26 Nev. 373, 68 P. 689 (1902) (funds for chairs and carpet required by supreme court refused by legislatively created board of capitol commissioners).

18 *See* notes 21-26 and accompanying text *infra*.

19 *See* notes 37-51 and accompanying text *infra*.

20 Compare the outspoken judicial pronouncements on which courts have been able to rely cited in note 15 *supra*.

B. *Evolution of Standards*

In *Judges for the Third Judicial Circuit v. County of Wayne*,[21] the Supreme Court of Michigan fashioned a test designed to avoid judicial interference with the existing legislative machinery for funding the courts in all but the most extreme cases of legislative parsimony.[22] The court concluded that inherent power should be used only when inadequate appropriations would impair the "effectively continuing function of the Court."[23] In this instance, the court held that while the judicial branch may have a keen interest in the requested expansion of probation and clerk services, the record did not justify the cost as being of practical necessity to the court's continued functioning.[24] The *Judges* standard thus emphasized the element of necessity in preference to broader criteria employed by other courts.[25] Significantly, the test did not admit to a standard balancing the relative needs of the three governmental branches; practical necessity in the most absolute sense was chosen as the sole standard.[26]

In *Leahey v. Farrell*,[27] a Pennsylvania Court of Common Pleas[28] had entered an order increasing the compensation of its official court reporters without having first presented the proposed salary increases to the county salary review board.[29] Upon the county commissioners'

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21 383 Mich. 10, 172 N.W.2d 436 (1969).

22 The case arose out of the refusal of officials of Wayne County to provide funds for additional probation officers, law clerks, and for a judicial assistant for the county circuit court. The writ of mandamus compelling those funds was refused in part, the majority seeing administrative inherent power as a narrowly defined but necessary concomitant to judicial power. *Id.* at 21, 172 N.W.2d at 440. The lower appellate court had found statutory authority for each of the judges' demands and granted the writ as to all. 15 Mich. App. 713, 167 N.W.2d 337 (1969). On appeal, however, relief was granted only as to expense for the judicial assistant. 383 Mich. at 32, 172 N.W.2d at 445.

23 383 Mich. at 23, 172 N.W.2d at 441.

24 Corrections, pardons, and paroles are historically the primary responsibility of the executive branch of government. And while such things are appropriately within the purview of a broad concept of the needs of justice, they are not normally a part of the narrower notion of practical necessities of effectively continuing court functioning.

Id. at 26, 172 N.W.2d at 442.

25 *See* notes 37-51 and accompanying text *infra*.

26 "[W]e deliberately choose the narrower term. . . . The test is not *relative need*, but *practical necessity*." 383 Mich. at 23, 172 N.W.2d at 441 (emphasis in original).

27 362 Pa. 52, 66 A.2d 577 (1949).

28 The Court of Common Pleas, of which there is one for each judicial district in Pennsylvania, has unlimited jurisdiction in all cases except as may otherwise be provided by law. PA. CONST. art. V, § 5. Although a part of the state's unified judicial system, the Court of Common Pleas derives funds from municipal governments. 16 P.S. §§ 1822, 1823.

29 Pennsylvania law provided that in counties of the fourth class:

salaries and compensation . . . shall be fixed by the salary board created by this act. . . .

and comptroller's refusal to honor the court order, the reporters brought a mandamus action before the same court to compel compliance.[30] The writ was issued but on appeal the state supreme court reversed, holding that non-compliance with methods for determining court salaries established by the legislature precluded compulsory payment of the increased compensation.[31]

Although it dismissed the writ, the *Leahey* court did recognize the inherent right of the judiciary to force the legislature to provide required funds. The standard used, however, was slightly different from that embraced by the court in *Judges*. Acknowledging that the separation of powers doctrine imposes limits upon judicial functions,[32] the court nonetheless observed that

> [s]hould the legislature, or the county salary board, act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employees or for the payment of adequate salaries to them, whereby the efficient administration of justice is impaired or destroyed, the court possesses the inherent power to supply the deficiency.[33]

The emphasis upon judicial power to require financing for the essential needs of efficient court administration is important.[34] The court did not suggest the use of inherent power either to expand or to improve present programs; however, the court did assert its right to

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> . . . [T]he board shall . . . fix the compensation of all . . . court criers, tipstaves and other court employees, and of all officers, clerks, stenographers and employees appointed by the judges of any court and who are paid from the county treasury.

Act of July 5, 1947, § 23, P.L. 1380, *quoted in* 362 Pa. at 54, 66 A.2d at 578.

30 Although an action in mandamus is most often used to compel financial support, other remedies have been employed. *See, e.g.*, Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963) (declaratory judgment); *In re* Appointment of Clerk, 297 S.W.2d 764 (Ky. Ct. App. 1957) (*ex parte* order); Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960) (debt); Zangerle v. Court of Common Pleas, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (eviction order); State *ex rel.* Reynolds v. County Court, 11 Wis. 2d 560, 105 N.W.2d 876 (1960) (contempt).

31 362 Pa. at 59-60, 66 A.2d at 580.

32 Control of state *finances* rests with the legislature, subject only to constitutional limitations . . . . The function of the judiciary to administer justice does not include the power to levy taxes in order to defray the necessary expenses in connection therewith. It is the legislature which must supply such funds.

Id. at 57, 66 A.2d at 579 (emphasis in original) (citation omitted).

33 *Id.* at 58, 66 A.2d at 580.

34 In *In re* Surcharge of County Comm'rs, 12 Pa. D. & C. 471 (C.P. Lackawanna County 1929), the court held that the only limit on inherent power was that its exercise be reasonably necessary. Although *Leahey* qualified this standard, the reasonable and necessary criterion was attributed in subsequent cases to dicta in *Leahey*. *See* notes 43-50 and accompanying text *infra*.

decide its own fiscal requirements and, if these requirements were not adequately met in the context of reasonable procedures, to use its remedial machinery to compel proper funding.

The conservative standards of *Leahey* and *Judges* have rarely resulted in serious confrontations,[35] primarily because of their defensive nature and, perhaps, because they have a firm foundation in accepted notions of basic judicial functions. Experience may add new substance to these tests if the basic material needs of the courts change. As views concerning the basic functions of courts change, even the most expansive use of inherent power may be justified in terms of essential needs.[36]

Cases in which the judiciary has cast its prerogatives in broad terms are not new.[37] Often, however, where a court has used sweeping language when granting monies requested, its holding is more appropriately explained in terms of a statutory grant of fiscal authority to a court, or a specific state constitutional mandate directed at the judiciary.[38]

Elements of both factors were present in *Smith v. Miller*,[39] a 1963 decision of the Colorado Supreme Court empowering the judges of each judicial district to fix "reasonable" salaries for court employees. Four judges of the district court in El Paso County conducted a survey of salary scales in other judicial districts and, based upon their findings and assessment of employee ability, established a schedule of compensation. When the county commissioner rejected several recommendations, the district court issued a writ of mandamus. The applicable statute provided that judges of the district court could fix

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35 *See, e.g.*, cases cited in note 13 *supra*.

36 Minimally, the necessities of judicial administration are those functions which protect the constitutional rights of litigants. Protection of such rights may serve as the lowest denominator in defining necessary court functions. Of course this denominator may fluctuate with changes in constitutional interpretations. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643 (1961) (establishing need for pre-trial hearings on admissibility of evidence); Miranda v. Arizona, 384 U.S. 436 (1966) (creating need for pre-trial hearings on voluntariness of confessions).

Moreover, administrative requirements may vary from court to court. The *Judges* court observed:

> We do not propose here to itemize those expenses which are necessaries. What may be deemed necessary for an appellate court may not be essential in a trial court. What may be crucial in a metropolitan court may be superfluous in the hinterlands.

383 Mich. at 23, 172 N.W.2d at 441.

37 *See, e.g., In re* Court Room, 148 Wis. 109, 134 N.W. 490 (1912).

38 *See* note 15 *supra*.

39 153 Colo. 35, 384 P.2d 738 (1963).

salaries "subject to the approval of the county commissioners."[40] The state supreme court, affirming mandamus, wove constitutional principles into its interpretation of the statute[41] and held that

> in the absence of a clear showing that the acts of the judges in fixing such salaries were arbitrary and capricious and that the salaries so fixed are unreasonable and unjustified . . . it is the ministerial duty of the county commissioners to approve them and to provide the means for payment of such salaries.[42]

The burden of proof was thus shifted to the county commissioners to show that the assessment was unjustified,[43] whereas under the *Leahey* standard the judiciary itself had the burden of proving that a similar salary increase was necessary for the efficient administration of justice. Significantly, the standard relied on in *Smith* was reasonableness, and not the strict necessity criterion of the more conservative cases.

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40 COLO. REV. STAT. ANN. §§ 39-16-1, 56-3-8 (1963).

41 [I]t must be assumed that the legislature acted with full knowledge of relevant constitutional provisions . . . [and] inherent judicial powers existing . . . ; that it did not intend to create a situation amounting to a departure from the general concept of democratic government; and that it sought to recognize and confirm inherent powers rather than destroy them.

153 Colo. at 39, 384 P.2d at 740. The court found that, in light of a state constitutional mandate dividing the powers of government into three departments, the legislature could not have meant to do violence to the principle that

> courts have the inherent power to carry on their functions so that they may operate independently and not become dependent upon or a supplicant of either of the other departments of government, and may incur necessary and reasonable expenses in the performance of their judicial duties . . . .

Id. at 41, 384 P.2d at 741.

42 *Id.* at 41, 384 P.2d at 741.

The issue of ministerial duty rather than discretion pertains to the operation of mandamus. The writ is traditionally limited to instances involving an official duty to act in a ministerial, non-discretionary capacity. *See, e.g.*, State *ex rel.* Town & Suburb Dev. Co. v. Maser, 172 Ohio St. 505, 178 N.E.2d 791 (1961) (mandamus could not be used to control legislative discretion); Huey v. King, 220 Tenn. 189, 415 S.W.2d 136 (1967) (mandamus will lie against mayor and aldermen if duty is ministerial). *See also* cases cited in Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 54-55, 274 A.2d 193, 198, *cert. denied*, 492 U.S. 974 (1971). The use of inherent power to substitute judicial discretion for the judgment of the legislature and executive indicates a possible expansion of mandamus along lines similar to judicial review. For a discussion of the writ with respect to judicial review, see Weintraub, *Development of Scope of Review in Judicial Review of Administrative Action: Mandamus and Review of Discretion*, 33 FORDHAM L. REV. 359 (1965).

43 The presumption of reasonableness attaching to the court's financial request, and the concomitant shift in the burden of proof, have not been widely followed. The rationale of such conservatism may perhaps be found in the lingering impression, even in jurisdictions that have taken a more aggressive position, that courts should justify their needs in the context of traditional legislative and executive control over government fiscal policy.

More recently, the Pennsylvania Supreme Court in *Commonwealth ex rel. Carroll v. Tate*[44] departed from the standards advanced in *Leahey* and *Judges*. That case was based solely on the doctrine of implied judicial power and was decided in the context of a modern metropolitan judicial system. Upholding the lower court's competence to mandate funds for its operation, the majority stated that "the Judiciary *must possess* the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice."[45] The defensive use of inherent power was abandoned in favor of an aggressive application of the standard of reasonableness. The major portion of a previously denied budget request for probation officers,[46] court personnel, and services was sustained as "reasonable and necessary."[47] In so doing, the supreme court overruled the Philadelphia City Council's rejection of items requested in the normal budget process[48] and compelled funds not previously requested from the Council.[49]

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44 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971). The Court of Common Pleas submitted a $19 million budget for fiscal year 1970-71 to the finance director of Philadelphia. In hearings before the City Council the court justified and was granted a reduced proposal, but requested an additional $5.2 million, approximately $2 million of which had not previously been requested. Upon the Council's rejection of the request, a writ of mandamus compelling payment of $2,458,000 was granted, and the Council appealed.

45 *Id.* at 52, 274 A.2d at 197 (emphasis in original).

46 *But cf.* note 24 and accompanying text *supra*.

47 442 Pa. at 52, 274 A.2d at 197.

The *Carroll* court appears to rely heavily on what it sees as the *Leahey* precedent of reasonable necessity. The court in *Leahey*, however, qualified the reasonableness test by requiring that the denial of funds must endanger the efficient administration of justice before use of the inherent power would be justified. *See* notes 21-28 and accompanying text *supra*.

48 The Pennsylvania Supreme Court sustained the lower court's treatment of the Court of Common Pleas' request. The reasons why certain items were disallowed, decreased, or left intact are not clear from the opinion. The majority simply agreed with the lower court's conclusion that "the amount recommended by Mayor Tate and approved by Council is inadequate to meet the reasonable needs of the Court [of Common Pleas] for the present fiscal year." 442 Pa. at 57, 274 A.2d at 199-200. The supreme court considered, as did the lower court, the time remaining in the year and correspondingly reduced the request. The complete tabulation of the initial request and award by the superior court is as follows:

	Original Request	*9/30/70 Court Order*
Adult Probation	$1,782,216	$ 800,000
Juvenile Probation	539,922	250,000
Data Processing	453,934	250,000
Apprehension of Fugitives	335,910	285,000
Courtroom Personnel	224,452	100,000

Carroll provides an important precedent for urban courts facing criminal justice delay. The inherent power doctrine was used to compel funds needed to meet the demands of criminal justice administration, even in the face of serious urban financial problems. In applying the standard of reasonable necessity, however, the court cautioned that

> [t]he Court does not have *unlimited* power to obtain from the City whatever sums it would like or believes it needs for its proper functioning or adequate administration. Its wants and needs must be proved by it to be "reasonably necessary" for its proper functioning and administration, and this is always subject to Court review.[50]

Although it mentioned the *Leahey* impairment of justice standard, the *Carroll* majority expanded the concept, adopting a flexible test of reasonableness keyed to the constantly changing demands upon the judicial system.[51] Perhaps no more specific standard is possible. It was clear to the majority, however, that in determining what expenses are reasonably necessary, the general financial condition of the city need not be considered.[52] Under the *Carroll* test inherent power may be

	Original Request	*Court Order 9/30/70*
Attorney Fees	300,000	300,000
Arbitration Fees	390,000	200,000
Writ Service	100,000	75,000
Gibson Building Personnel	227,036	Disallowed
Probation Relocation	24,500	Disallowed
Repairs—1801 Vine Street	40,000	Disallowed
Janitorial Staff	56,940	Disallowed
Microfilm	96,822	Disallowed
Bail Project	172,857	Disallowed
Dental Equipment	10,413	Disallowed
Domestic Relations	61,912	Disallowed
Total Copy System	23,000	23,000
Building Services	145,377	Disallowed
Law Clerks	133,206	100,000
Station Wagon	2,320	Disallowed
Prothonotary Relocation	35,000	—
Crime Commission Grant	75,000	75,000
Totals	$5,230,817	$2,458,000

Id. at 50, 274 A.2d at 196.

49 Justice Pomeroy, however, expressed reservation in dismissing procedural irregularities in the court's additional request. *Id.* at 68-69, 274 A.2d at 203 (concurring opiuion).

50 *Id.* at 57, 274 A.2d at 199 (emphasis in original).

51 *Id.*

52 The City Council argued, *inter alia,* that Philadelphia's general financial condition should be considered when determining what is "reasonably necessary" for the "efficient administration of justice." The demand for additional funds for both the maintenance and the improvement of public services and general public welfare, the essential increases in wages, and the rise in purchasing costs had placed a severe drain on every governmental unit. Nevertheless, the court answered, the deplorable financial conditions in

utilized to compel resources for any reasonable judicial function. The assessment of needs, measured by a broad constitutional mandate to administer justice, is left to the judicial branch.

II

SCOPE OF INHERENT POWER

A. *Basis in Separation of Powers*

Courts have recognized that the exercise and scope of inherent judicial power are closely related to principles underlying the separation of powers in our constitutional system.[53] Unless it is to be a subordinate branch of government, a status contrary to the provisions of most state constitutions,[54] the judiciary must possess either the express or implied power to preserve its integrity and perform its duties. Since the degree of financial support is a major, if not determinative, factor in the quality of justice,[55] the use of inherent power to sustain and promote reasonable and necessary judicial functions can argnably be justified.

The *Carroll* standard for invoking inherent power gives the judi-

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Philadelphia must yield to the constitutional mandate that the judiciary shall be free and independent and able to provide an efficient and effective system of justice. *Id.* at 56, 274 A.2d at 199. *But cf.* note 71 and accompanying text *infra*.

53 The judiciary is an independent and equal coordinate branch of the government. Courts were established for the purpose of administering justice judicially, and it has been said that their powers are coequal with their duties. In other words, they have inherent power to do everything that is necessary to carry out the purpose of their creation.

Knox County Council v. State *ex rel.* McCormick, 217 Ind. 493, 498, 29 N.E.2d 405, 407-08 (1940). *See generally* A. VANDERBILT, THE DOCTRINE OF THE SEPARATION OF POWERS AND ITS PRESENT-DAY SIGNIFICANCE (1963); M. VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS (1967); Ervin, *Separation of Powers: Judicial Independence*, 35 LAW & CONTEMP. PROB. 108 (1970); Parker, *The Historic Basis of Administrative Law: Separation of Powers and Judicial Supremacy*, 12 RUTGERS L. REV. 449 (1958); Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. CHI. L. REV. 385 (1935).

54 R. DISHMAN, STATE CONSTITUTIONS: THE SHAPE OF THE DOCUMENT 2 (1960).

55 Speaking on the administration of the courts, Henry P. Chandler, former Director of the Administrative Office of the United States Courts, observed:

Nearly every federal administrator will testify, I think, that the efficiency of his agency depends to a considerable degree upon the adequacy of the appropriations made for it by the Congress. Certainly this has been true in my experience with the appropriations for the courts. When they are insufficient, the supporting personnel of the courts and their facilities have to be restricted. Nearly every improvement in the work of the courts calls for added personnel or more or better office facilities, which cost money.

Chandler, *The Federal Judicial Administration from the Standpoint of the Administrative Office*, 16 U. CHI. CONFERENCE SERIES 3, 6 (1956).

cial branch authority to determine the amount of funds necessary to fulfill its constitutional responsibilities. This undermining of the traditional legislative dominion over appropriation and executive control over fiscal administration is but an extension of the constitutional principle that the legislature and executive cannot cripple the courts by reducing or refusing necessary appropriations.

Judicial fiscal independence is not, as some have asserted, violative of the separation of powers doctrine;[56] rather, it is necessary for the preservation of that doctrine. Adherence to traditional methods of raising and controlling public funds should not interfere with what is fundamentally a judicial area of responsibility—insuring the viability of court functions. To a degree the same logic applies to the expansion and creation of new programs to meet the growing demands of the legal system.[57] At no time have the divisions of government been so rigidly preserved that one branch could not assume duties of another to ensure the adequate administration of its basic functions.[58] Placing the preservation and improvement of the judicial system beyond the reach of political considerations may do more to promote the public will as it is reflected in the constitution of government than would leaving control entirely in legislative hands.

B. *Developing the Standard*

1. *Future Application*

The necessary and reasonable standard, being broader than the *Leahey* and *Judges* tests, allows courts to use their inherent power beyond mere performance of basic judicial tasks and to reach equally legitimate, though not essential, duties. The proper constitutional role of the judicial branch need not be defined solely in terms of protecting minimum individual rights delineated in federal and state constitutions. Yet the standards described in *Leahey* and *Judges* do not seem to justify compulsion of funds for anything more than this bare minimum and perhaps reflect a fear of usurping the prerogatives of the executive and legislative branches. The *Carroll* standard of reasonableness, on the

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56 *See* Brennan, *Judicial Fiscal Independence*, 23 U. FLA. L. REV. 277 (1971).

57 *See* notes 59-64 and accompanying text *infra*.

58 If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which [the separation of powers] axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct.

THE FEDERALIST No. 47, at 339 (B. Wright ed. 1966) (J. Madison). *See also* cases cited in the *Carroll* case, 442 Pa. 45, 52-53, 274 A.2d 193, 197 (1971).

other hand, could be extended to compel funds for programs expanding present judicial functions.[59]

The capacity of judges in juvenile and domestic relations courts to act as arbitrators and counselors in addition to hearing and deciding cases is widely recognized.[60] The fair and thorough evaluation of petitions for probation requires substantial judicial time and attention.[61] Under the more restrictive standards, the injustice that may result from not conducting such activities may be considered insufficient to jeopardize "essential court functions." Judges may also perceive a need for the courts to provide investigators to aid the counsel of indigents, to assign counsel for indigents in both criminal and civil cases, or to appoint court masters or impartial experts in certain cases.[62] In each of these examples the *Carroll* model for the exercise of inherent power may provide the means to compel necessary funding. The problems of oppressive delay and congestion in the courts may also be partially resolved through application of the reasonable necessity standard, whereas it may be more difficult to justify remedial action to the extent necessary under the *Leahey* and *Judges* models.[63]

The inherent power doctrine has not yet been used to demand additional resources for new programs instituted through the judiciary's initiative. The logical extension of the reasonable and necessary standard for the exercise of judicial inherent power leads the courts in such a direction. Although the courts may as yet be reluctant to exercise such coercive force in any but the most severe cases of legislative intransigence, the broader standard of *Carroll* would certainly not preclude this more creative use of inherent power.

2. *Limitations on the Use of Inherent Power*

The *Carroll* standard demands caution and circumspection to preserve independent identity and balance among legislative, executive,

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[59] Justice Roberts in *Carroll* questioned the majority's elimination of requested funds for the bail project. 442 Pa. at 60, 274 A.2d at 204-05 (dissenting opinion). While the majority held the expense to be "without the limits of judicial responsibility," Justice Roberts asserted that the project was not only an "opportunity to improve the administration of justice" but also a cost saving device as well. *Id.* at 62, 274 A.2d at 206. The court's division on this point reveals that even the most progressive court thus far has set limits upon new extensions of court services.

[60] James, *Crisis in the Courts*, 51 J. AM. JUD. SOC'Y 283, 286 (1968); Virtue, *Improving Metropolitan Justice—A Guide to Court Organization*, 48 J. AM. JUD. SOC'Y 23, 26-27 (1964).

[61] L. DOWNIE, JUSTICE DENIED: THE CASE FOR REFORM OF THE COURTS 48 (1971).

[62] Peck, *Court Organization and Procedures To Meet the Need of Modern Society*, 33 IND. L.J. 182 (1958).

[63] For example, use of the inherent power might have been extended to compel the resources necessary for the implementation of a judicially promulgated speedy trial rule. *Cf.* note 12 *supra*.

and judicial branches of government. Implicit in the function of democratic government is the assumption that each branch will act reasonably and will respect the limits of its power.[64] Even without this tacit restraint, the threat of a fiscal crisis,[65] the threat of the removal of judges through impeachment[66] or elective processes,[67] and the threat of constitutional amendment[68] impose further constraints upon judicial extravagance.

While certain forces external to the system may establish limits on judicial inherent power, other factors may serve to control abuses as well. The judicial branch functions within a framework of traditional attitudes toward the judicial role which tend to dampen judicial enthusiasm for departure from the traditional view of a court's function.[69] The conception of what constitutes the proper function of the court system in light of the demands placed upon it has been rapidly changing, however, and dependence on history as a limiting factor may be only partially satisfactory.

The concept of reasonable and necessary expenses may also be limited by the government's financial status.[70] Whether a court should

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64 It is incumbent upon each department to assert and exercise all its power whenever public necessity requires it to do so; otherwise, it is recreant to the trust reposed in it by the people. It is equally incumbent upon it to refrain from asserting a power that does not belong to it, for this is equally a violation of the people's confidence.

State *ex rel.* Schneider v. Cunningham, 39 Mont. 165, 168, 101 P. 962, 963-64 (1909).

65 *See* notes 70-71 and accompanying text *infra.*

66 *See generally* THE FEDERALIST No. 81, at 508-09 (B. Wright ed. 1966) (A. Hamilton).

67 *See, e.g.*, Carlson v. State *ex rel.* Stodola, 247 Ind. 631, 638-39, 220 N.E.2d 532, 536 (1966), where the court observed that "there comes a time when a judge or any other public official must make an accounting to the voters for his actions, if arbitrary, extravagant or not in the public interest."

68 N.Y. CONST. art. VI, §§ 29(c), (d) exemplify such a constitutionally imposed limitation:

> c. Insofar as the expense of the courts is borne by the state or paid by the state in the first instance, the final determination of the itemized estimates of the annual financial needs of the courts shall be made by the legislature and the governor in accordance with articles four and seven of this constitution.
>
> d. Insofar as the expense of the courts is not paid by the state in the first instance and is borne by counties, the city of New York or other political subdivisions, the final determination of the itemized estimates of the annual financial needs of the courts shall be made by the appropriate governing bodies of such counties, the city of New York or other political subdivisions.

In its 1958 report, the Temporary Commission on the Courts, the body which drafted article VI of the N.Y. Constitution, said of section 29 that "[i]t should be emphasized that, under the Commission's recommendations, all budget requests are, as the name implies, *requests* and will be finally determined by the appropriating agencies as, in their wisdom, they deem right." 1958 N.Y. Leg. Doc. No. 36, at 24 (emphasis in original).

69 A recognized test of whether a function is judicial is whether it is one that conrts have historically performed. *See* LeRoy v. Special Ind. School Dist., 285 Minn. 236, 241-42, 172 N.W.2d 764, 768 (1969).

70 [M]andamus will not issue, as a rule, where it is apparent that the writ will

share the burdens of fiscal drought is a perplexing problem. While the *Carroll* majority maintained otherwise, fiscal context arguably should affect the court's interpretation of reasonable and necessary expenses.[71] Expansion of court programs in the face of inadequate revenues and capacity taxation is unjustified. It is a proper use of inherent power, however, for the courts to demand those funds which have been denied by the legislature, despite obvious judicial need, for reasons of political expediency, election tactics, or mere niggardliness.

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be futile or ineffectual by reason of the inability of the respondent to comply therewith. Although want of funds may not be conclusive ground against issuing the writ, and may not always prevent such issuance, the court in its discretion may refuse the remedy if it is satisfied that the respondent has not the necessary money or the means of procuring it to comply with the mandate.

Commissioner *ex rel.* McLaughlin v. Erie County, 375 Pa. 344, 350, 100 A.2d 601, 604 (1953).

[71] Like the other branches, the judicial branch should work within the framwork of realistic fiscal policy. In his concurring opinion in *Carroll*, Justice Jones reflects this concern and criticizes the majority for not considering the financial plight of the city. 442 Pa. at 58-59, 274 A.2d at 204 (concurring opinion).