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Who's to Blame for Judicial Activism?

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BY NAIL DIVINE

The battle between the judiciary and the popularly elected branches of government has grown acrimoniously bitter in an astonishingly short period of time. And the chief architects of this acrimony are the courts themselves.

Congress and the executive branch have sought to limit the authority of federal courts. Yet, on so many occasions, the real villains in this drama are the very branches of government that make the non-independent judiciary the controlling authority. Congress, the executive branch and the judiciary have often been at odds.

The Supreme Court, with its unshaken confidence in Congress, has been expressly aware of the dangers of judicial independence. General William French Smith, the federal judge, has long been convinced that the popularly elected branches of government are capable of exercising the powers that have been given them.

Restrictions on Social Issues

Current administrative policies reflect these views.

By limiting its use of the courts, the Reagan administration has restricted the judiciary's discretionary powers—on local school issues, federal enforcement of civil rights, the rights of workers, the rights of patients, among others.

The judiciary, however, has been indispensible in the battle between the courts and Congress. In many cases, the courts have acted as a counterweight to Congress.

More important, the administration has assumed that it can override or regulate many aspects of federal administrative policies. Yet, in many cases, the courts have been powerless to stop the administration from acting in ways that are inconsistent with the Constitution.

In addition, Congress has chosen to use the courts as a partisan tool to achieve its political goals. But more recent cases suggest that the courts have a role to play in this area.

The Supreme Court has occasionally been critical of the judiciary's role in the political process. But more recent cases suggest that the courts have a role to play in this area.

The Court has been careful to exercise caution in these cases. Yet, in many cases, the courts have been powerless to stop the administration from acting in ways that are inconsistent with the Constitution.

In conclusion, the judiciary has a role to play in the political process. But more recent cases suggest that the courts have a role to play in this area.

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