

**Austin Asche Oration – Darwin
Hilton Hotel, Darwin**

"Judicial independence – from what and to what end?"

**The Hon Susan Kiefel AC
Chief Justice of Australia**

The Hon Alan Robertson, President of the AAL; The Hon Austin Asche; Chief Justices Grant and Murrell, the Hon Tom Pauling; judicial colleagues past and present; members of the AAL; ladies and gentlemen.

I am honoured to give this Oration the name of which recognises the significant contribution made by the Honourable Austin Asche to the law, to the courts in which he served and to this Territory.

The theme of my discussion is judicial independence. It is a matter about which as Chief Justice of the Northern Territory Austin Asche felt strongly, as evidenced by the stand he took when legislation was enacted by the Northern Territory Parliament in the wake of the Royal Commission into the Chamberlain case. The legislation provided that where the prerogative of mercy had been extended to a person, the Supreme Court, after reference to it by the Attorney-General, could consider whether the finding of guilt of that person should be quashed and a verdict of acquittal entered. The powers given to the Supreme Court were greater than those ordinarily given to a Court of Criminal Appeal and allowed the Court to inform itself as it saw fit and to make its own investigations. The Court did quash the convictions of the Chamberlains, but not without strong statements by Chief Justice Asche about the position in which the legislation placed the Court. His Honour said:

"I see great difficulties in a procedure which allows the Court to become some sort of investigative tribunal gathering its own material. The proper role for a court in this country as in any country governed by the common law system is to keep above the conflict and rule only upon such material as may properly be produced by parties properly interested in a particular dispute. I acknowledge that this section could apply only in exceptional cases; but exceptional cases may become precedents for extension of powers to less exceptional cases and I would not wish this process to be later justified because the court had previously accepted it without protest; and I make that protest now."¹

An overview

"Judicial Independence" is a subtle concept. In the Australian constitutional context, it is often spoken of as a systemic quality. For example it has been said that it is "[f]undamental to the common law system of adversarial trial" that it be "conducted by an independent and impartial tribunal", and that this principle is "fundamental to the Australian judicial system"². By contrast, in the context of other, rights-based constitutions and conventions, greater stress is placed on the importance of judicial independence to individuals appearing before the courts. As John Adams – who would go on to be the second President of the United States – put it in art XXIX of the Massachusetts Constitution of 1780, "[i]t is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit"³. While differing in emphasis, these two approaches are clearly related. On either approach, the importance of judicial independence to our societies is not to be underestimated.

In Australia, judicial independence is understood to require freedom from any external influence, other than the law itself. It is understood to reflect the separation of the powers of government and the freedom of the courts from interference by the other, arguably, more powerful, arms of

government. Yet history shows that our courts have not always been vigilant in the maintenance of that independence, at least in times of national emergency.

Countries where constitutions do not reflect a strict separation of legislative, executive or judicial power are unlikely to ascribe the same meaning to judicial independence. We should not too readily assume that courts of other systems share our understanding of judicial independence. Much may depend upon the constitutional role which is assigned to those courts or the socio-political conditions in which they operate and which provide the context for their constitutional theory and interpretation.

Judicial independence may also be understood as freedom from pressures which are not external. The requirement of impartiality necessarily refers to one's own cast of mind which is brought to bear in the process of decision-making. This may require distancing one's self from one's own prejudices and ideology.

But history teaches us that there have been times when judicial independence has come to mean independence from the law. The conduct of some courts in the time of the Weimar Republic serves as an example. In such a circumstance fidelity to the rule of law – one of the ends which judicial independence is intended to serve – is abandoned.

Comparisons and reflections of these kinds might raise two questions: what are the courts and judges intended to be independent from? And what is judicial independence for? Judicial independence is a large topic. But these enquiries may help illuminate what the words mean to us.

Independence from what?

The Australian constitutional context

Our conception of judicial independence is shaped largely by the framework of the Commonwealth Constitution and the distinct role that it gives to federal courts. Separate provision is made for each of the legislature, the executive and the judiciary, the latter being contained in Chapter III which vests the judicial power of the Commonwealth in courts alone. The guaranteed jurisdiction of the High Court to review actions of the executive, given by s 75(v) of the Constitution, emphasises the separation of powers and that Court's special role.

Our contemporary conception of judicial independence is shaped by an acceptance that what have been referred to as the "three great powers"⁴ should as far as possible be separated into three departments, relatively independent of each other – though there is some doubt as to whether the framers of the Australian constitution held such views⁵.

One reason for the need to mark the judiciary as independent was explained by Alexander Hamilton. The executive, he said "not only dispenses the honours, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either ... It may truly be said to have neither force nor will, but merely judgment". The consequence, he said is that "the judiciary is beyond comparison the weakest of the three departments of power ... and all possible care is requisite to enable it to defend itself against their attacks."⁶

Since Federation there have been a number of forays by the Commonwealth legislature into the judicial sphere. One of the best-known judicial corrections is of course the *Communist Party Case*⁷ where there was an attempt to connect the statute outlawing the Communist Party with the defence power and the incidental power by use of the recitals to the statute. As my former colleague, Susan Crennan observes⁸ "[t]he constitutional significance of the case now is that the Commonwealth cannot 'recite itself

into power' thereby circumventing a critical judicial function under the separation of powers, and that Chapter III, particularly s 75(v), has an important role in the plan of the Constitution when questions of personal liberty are at stake."

Influence and pressure from the executive can take many forms. The independence of the judiciary would be set at nought if judges did not have security of tenure and of remuneration. Chief Justice Gleeson once pointed out⁹ that arrangements concerning the appointment and tenure of judges, terms and conditions of service and procedures for dealing with complaints against judicial officers are all relevant to independence. And as his Honour observed, there are differences in constitutional provisions with respect to judges and legislative choices which may be made concerning arrangements of the kind mentioned.

A traditional view is that State constitutions do not provide for a strict separation of powers¹⁰. This may lead to assumptions about the extent to which the State judiciary may be protected. Justice John Basten of the Supreme Court of New South Wales has cautioned against overstating that traditional view¹¹. He points to the fact that in many State constitutions the legislature, the executive and the judiciary are dealt with separately. We know that State courts exercise a supervisory jurisdiction over State administration. That jurisdiction reflects a basic separation of powers doctrine. Moreover the decision in *Kirk's Case*¹² ensures that State Supreme Courts retain that jurisdiction.

It is generally accepted that some State statutes which are concerned with security of tenure and protection of judicial remuneration reflect a separation of powers,¹³ though of a looser and more vulnerable kind than that mandated by Ch III at the Commonwealth level. It may be, however, that the jurisprudence which has developed since *Kable's Case*¹⁴ has the consequence that the levels to which the independence of courts in our

federation are secured may not be quite as different as previously understood.

A temporary disturbance

It must be accepted that English and Australian courts have not always been immune to external influence. They have felt and responded to a need to allow wider legislative and regulation-making powers in times of war. This may be understandable but it does suggest that judicial independence is not maintained as an ideal at all times.

Robert Menzies was a law student in 1918 when he observed in an article that constitutionalists were reconciled to a "temporary disturbance of the traditional constitutional balance"¹⁵. Justice Higgins of the High Court frankly acknowledged in 1915, that, faced with the "grave peril of national war", it has "often been found necessary to suspend or modify temporarily constitutional practices, and to commit extraordinary powers to persons in authority"¹⁶.

Very few judges took a different approach. The most famous dissent is that of Lord Atkin in *Liversidge v Anderson*¹⁷ in 1942. There a majority of the House of Lords held that a government Minister's opinion about a person's loyalty or hostile associations could not be challenged. Lord Atkin, rather impolitely, used passages from *Alice in Wonderland* to ridicule the reasons of the majority. His dissent has been described by Lord Bingham as "eloquent and courageous" asserting "nobler, more enduring values" such as the rule of law¹⁸. But in the case which ultimately vindicated Lord Atkin, Lord Diplock was kinder to the *Liversidge* majority. He said they may have acted expediently but that, given the times, their error was understandable¹⁹.

Comparisons with other constitutional systems

Cases such as those just mentioned may teach us that assumptions should not be made about our own judges' adherence to orthodoxy in difficult times. There are other, wider assumptions which should not be made. One is that we should not assume what judicial independence means in other systems. The enquiry "judicial independence from what?" may yield a very different result in a different constitutional setting.

A few years ago I was part of a delegation which visited courts in Beijing and Shanghai, at the invitation of the President of the Supreme People's Court. I was rather surprised to hear some Chinese judges and officials speaking of "judicial independence" as a goal which was being actively pursued.

Article 131²⁰ of the Chinese Constitution provides that "[t]he people's courts shall ... independently exercise adjudicatory power, and shall not be subject to interference from any administrative organ, social organisation or individual." It has been observed by one commentator²¹, that there are some telling omissions from this provision. It is silent on whether the organs of the Communist Party, the national and local legislature, and the procuracy can interfere with adjudication. The same commentator suggests that it is implied that other state organs might do so.

I was therefore left to wonder what the officials and judges had in mind when they spoke of judicial independence. The response elicited from further enquiries was that judges should be independent from corruption. We tend to exclude corruption as a possible operative influence, but of course English history shows that it was not that long ago, relatively speaking, when it was an issue for the judiciary. Francis Bacon's fall from the office of Lord Chancellor is a case in point. Corruption remains a real problem in South East Asia. Some wealthier countries in the region address it by remunerating

superior court judges with high salaries. But I understand the problem is greater in lower courts and in regional areas.

In some other constitutional systems the role of the courts assigned by the Constitution itself, as interpreted by the courts, may give the term “judicial independence” another dimension. The first few decades of the life of the Supreme Court of India demonstrate how a court’s understanding of its own role can affect judicial independence in practice.

India as we know it today – an independent republic – was established on 26 January 1950. Two days later, the Supreme Court of India held its first sittings. From the beginning, the Court displayed a certain independence, exercising its powers to review legislation for validity in the first decision it handed down²². Though it exercised those powers confidently where necessary, in one commentator’s view at least, while Prime Minister Nehru led the country, the judiciary maintained a certain respect for the representative credentials of the legislature, and eschewed radical constitutional innovation²³.

The same commentator suggests that after Nehru’s death in 1964, the Court began to go beyond the text of the Constitution, raising questions at the level of principle – salient amongst them being the question of what purposes underlie the written constitution, and how those purposes might affect the scope of the legislature’s powers of constitutional amendment²⁴. In the years leading up to 1975, several of the Court’s decisions are said to have impeded policy initiatives pursued by Prime Minister Indira Gandhi and her government²⁵. The Emergency of 1975-1977 was to prove a challenge for the Supreme Court and a turning point in its history.

Following the issue of a Proclamation of Emergency, civil society activists and political opponents of the government were detained under the Maintenance of Internal Security Act 1971. The validity of that Act was

challenged, as was the Proclamation of Emergency and a Presidential Order which purported to suspend the right to seek relief in the courts for breaches of constitutional rights and protections. On appeal, a majority of the Supreme Court (there was only one dissentient) dismissed the challenges. It has been said²⁶ that the Court's deferential approach during the Emergency was seen as a failure to protect the rule of law and damaged its standing with the public.

Alert to these perceived failures, the Court introduced measures designed to encourage access to judicial remedies, particularly by socially and economically disadvantaged segments of Indian society²⁷. These measures included the relaxation of standing rules and a proactive approach to the exercise of the Court's jurisdiction, whereby judges responded to grievances brought to their attention by letter, newspaper reports, or by third-parties²⁸. In public interest litigation facilitated by these measures, the Court made far-reaching orders and recommendations, attracting for itself the title of the most powerful court in the world.

Leaving the history there, it is instructive to note how the Emergency and the post-Emergency periods highlight, in very different ways, the relationship between judicial independence and institutional legitimacy. It is also instructive to note how understandings of judicial independence vary not only between jurisdictions, but over time in the same jurisdiction.

Freedom from other influences, including oneself

Of course the sources of threats to judicial independence as we understand it are not limited to the other arms of government. Pressure on judicial decision-making might come from the media and social media especially where a case is controversial. No more need be said about this than that a judge must not allow herself or himself to be subject to such pressures. There is also the influence or pressure which comes from strong

views held by a judge themselves or, some would say, by others involved in the decision-making process.

Independence from one's colleagues

Some time ago, and on more than one occasion²⁹, Justice Michael Kirby suggested that one aspect of judicial independence that is often overlooked is that judges must also be independent from each other. Judicial independence includes independence from inappropriate pressure to join in, or change, opinions to accord with those of other judges. No one would doubt Justice Kirby's independence in that regard.

It might be inferred that his Honour's concern was that there might be some judges of a stronger personality who might prevail over less assertive colleagues. Others have expressed a similar view – that some judges might suffer from a herd-like mentality and feel compelled to go along with the others.

There can be no doubt that each judge should maintain independence of thought in the process of deciding a matter. But that cannot mean refusing to listen to one's colleagues or not allowing one's views to be challenged by others. That is surely a dialogue which it is to be hoped anyone engaged in an intellectual pursuit would engage in. And in my experience that is what occurs.

I do not believe there to be a strong basis for the concerns expressed. If there is a justice who suffers from the kind of timidity assumed, I have not met them. The reality on the High Court is that each justice closely scrutinises the reasoning of their colleagues. There is no motivation to be agreeable in everything and certainly no motivation to be spared from writing another judgment. The greater discipline for most appellate judges, it seems to me, is not writing a judgment which is not necessary; that is to say, one

that adds nothing of substance to what has already been written. No real danger to independence of thought comes from one's colleagues in my view. But it may come from oneself, as history shows.

Independence from prejudice and ideology

Article 102 of the Constitution of the Weimar Republic, which was created in the aftermath of the first World War, stated that “[j]udges are independent and subject only to the law”. In 1923 the Association of German Judges published these words: "German judges consider it as a matter of course their duty to judge according to law and the precepts of justice alone"³⁰. But as many historians have observed, this is to employ the rhetoric of judicial independence to disguise decisions which were not of the law.

One might have expected judges trained in German law and judging to have a strong understanding of judicial independence. Moreover they were inculcated with an adherence to positive law. But they had also been appointed from the social elite who could afford the many years legal education, made necessary by Bismarck's plan to ensure that judges were drawn from a class which might be relied upon for their loyalty to the monarchy and who had a strong sense of nationalism³¹. Indeed, that plan succeeded: the judges proved unwilling to adapt to the new Republic and to laws made not by a Kaiser but by a legislature³². According to one historian,³³ “the vast majority of [judges] regarded laws promulgated by legislative assemblies rather than by a divinely ordained monarch as no longer neutral but ... [as] ‘party, class and bastard law ... a law of lies’”. Ironically, those same judges were accused of administering “class justice”³⁴. They discriminated in their treatment of offenders by reference to their politics, acquitting right-wing murderers, even if they had confessed, and imposing much lighter sentences³⁵. They were vociferous in their support of the prosecution of those on the left. They sided with those accused who

claimed to be acting in the name of an ideal of the old Reich³⁶. In a sentencing judgment in a case of treason, the accused were described as having "been guided in their actions by a purely patriotic spirit and the noblest of selfless intentions". The accused were Adolf Hitler and the others involved in the infamous Beer Hall Putsch in Munich in 1923. They were sentenced to the minimum term possible and Hitler was offered the prospect of parole after six months³⁷.

In the worsening economic conditions of the times the courts intervened to apply their own brand of justice. As the German currency depreciated the courts used the legal concepts of "changed conditions" and "good faith" to justify rescinding or modifying contracts to produce what they consider to be a fairer result³⁸. Even more radically a court held invalid legislation which made the paper mark legal tender and said that mortgages must be revalued to compensate for the depreciation of the currency³⁹. The law, it was said, must yield to the paramount rule of equity and good faith in the Civil Code. This may be seen to cloak political decision-making with the neutral mask of positivism. The decision has been interpreted as a judicial rebellion against the law. In the view of one historian⁴⁰, the judges proclaimed that the law was subordinate to the judge, not the judge to the law. The judges now invoked a higher law of their own making, one driven by the values which they held and shared⁴¹.

Judicial independence – to what end?

According to the eminent historian Sir Richard Evans, what mattered about the behaviour of the Weimar judges was the message which it sent to the public⁴². What this points up of course is the institutional damage wrought by judges not acting within the rule of law.

So one answer to the question as to the purpose judicial independence serves is that it enables the public to have confidence in the courts as

institutions. One way of instilling confidence is for judges to put aside their own ideologies and prejudices, so far as is humanly possible. The public must have faith that judges can and will do so.

If the public are to have confidence in the judiciary and the courts they must see the courts as free from influence and pressure. They must believe that they can rely upon the courts fairly and impartially to hear and determine their cases. Our society is intended to provide courts which are independent and impartial forums for the settlement of claims.

The attainment and maintenance of judicial independence requires judges to have a strong understanding of the role of courts in our society. It may be that that role differs according to the duties which a constitution is considered to have given the courts. What matters is public confidence in the institution.

The Weimar experience shows how the rhetoric of judicial independence can be used to legitimate decisions that undermine the very matters that independence is intended to secure. Returning to the questions posed by this paper – "Independence from what?" and "To what end?" – the Weimar judges can be taken to have answered both questions wrongly. The independence they sought was from the Republic and its laws; and they sought to ensure, not that the parties had a neutral forum where disputes might fairly be litigated, but rather that their own political ends would be met.

¹ *Re Chamberlain* (1988) 38 NTLR 82 at 85.

² *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 343 [3].

³ Constitution of the Commonwealth of Massachusetts (1780), Art XXIX, as referred to in *Pennekamp v Florida* (1946) 328 US 331 at 355.

⁴ *Evans v Gore* (1920) 253 US 245 at 249.

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- 5 *State of South Australia v Totani* (2010) 242 CLR 1 at 43-44; Nicholas Aroney et al, *The Constitution of the Commonwealth of Australia: History, Principle and Interpretation* (CUP, 2015) at 555-557. But see W Harrison Moore, *The Constitution of the Commonwealth of Australia*, 2nd ed (Sweet & Maxwell Ltd, 1910) at 96-7.
- 6 Alexander Hamilton, "The Federalist No 78: The Judges as Guardians of the Constitution", in Alexander Hamilton et al, *The Federalist* (Belknap Press, 2009) 508 at 509-510. The passage was quoted in *Evans v Gore* (1920) 253 US 245 at 249-250.
- 7 *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1.
- 8 The Hon Susan Crennan AC, "Sir Owen Dixon: The Communist Party Case, Then and Now", in the Hon Susan Crennan AC and Prof the Hon William Gummow AC, *Jesting Pilate and Other Papers and Addresses by the Rt Hon Sir Owen Dixon*, 3rd ed (Federation Press, 2019) 17 at 24.
- 9 *North Australian Aboriginal Legal Aid Service Inc v Bradby* (2004) 218 CLR 146 at 152 [3].
- 10 See, eg, W Harrison Moore, *The Constitution of the Commonwealth of Australia*, 2nd ed (Sweet & Maxwell Ltd, 1910) at 96 ("It may be assumed ... that the separation of powers is in the States no more than a rule of expediency subject to political sanctions.").
- 11 The Hon Justice John Basten, "Lecture on Judicial Review", lecture delivered at the University of New South Wales, 28 March 2012.
- 12 *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531.
- 13 See, for example: *Constitution Act 2001* (Qld) s 62 and *Supreme Court Act 1970* (NSW) s 29. Though the NSW provision does not expressly prevent judicial salaries from being reduced while a judge holds office, an equivalent provision in Queensland (now superseded) was interpreted by the High Court as having that effect in *Cooper v Commissioner of Income Tax for Queensland* (1907) 4 CLR 1304.
- 14 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.
- 15 Robert Gordon Menzies, "War Powers in the Constitution of the Commonwealth of Australia" (1918) 18 *Columbia Law Review* 1 at 9-10.
- 16 *Lloyd v Wallach* (1915) 20 CLR 299 at 310.
- 17 [1942] AC 206.
- 18 Lord Bingham "The Case of *Liversidge v Anderson*: The Rule of Law Amid the Clash of Arms (2004) 43(1) *The International Lawyer* 33 at 38.
- 19 *R v Inland Revenue Commissioners; Ex parte Rossminster Ltd* [1980] AC 952 at 1011.
- 20 Formerly Art 126.
- 21 Lin Feng, "The Future of Judicial Independence in China", in HP Lee and Marilyn Pittard (eds), *Asia-Pacific Judiciaries: Independence, Impartiality and Integrity* (CUP, 2018) 81 at 87.
- 22 Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart, 2017) at 120-1.
- 23 Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart, 2017) at 122.
- 24 Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart, 2017) at 123-4.
- 25 Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart, 2017) at 124-5.

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- 26 Jayanth K Krishnan, "Legitimacy of courts and the dilemma of their proliferation: the significance of judicial power in India", in Jiunn-Rong Yeh and Wen-Chen Chang (eds), *Asian Courts in Context* (CUP, 2015) 269 at 297.
- 27 Shyam Divan, "Public Interest Litigation", in Sujit Choudhry et al (eds), *The Oxford Handbook of the Indian Constitution* (OUP, 2016) 662 at 663, 666-7.
- 28 Shyam Divan, "Public Interest Litigation", in Sujit Choudhry et al (eds), *The Oxford Handbook of the Indian Constitution* (OUP, 2016) 662 at 668-672; Jayanth K Krishnan, "Legitimacy of courts and the dilemma of their proliferation: the significance of judicial power in India", in Jiunn-Rong Yeh and Wen-Chen Chang (eds), *Asian Courts in Context* (CUP, 2015) 269 at 297-8; Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart, 2017) at 127-8.
- 29 The Hon Justice Michael Kirby AC CMG, "Independence of the Judiciary – Basic Principle, New Challenges", address delivered at International Bar Association Human Rights Institute Conference, Hong Kong, 12-14 June 1998 at 22-4; "Courts & Politics: Judicial Independence – Summing Up", address at Yale Law School, The Global Constitutionalism Seminar, 16 September 2000 at 8; "Independence of the legal profession: Global and regional challenges" (2005) 26 *Australian Bar Review* 133 at 133-4.
- 30 Quoted in Walter Ott and Franziska Buob, "Did Legal Positivism Render German Jurists Defenceless during the Third Reich?" (1993) 2 *Social & Legal Studies* 91 at 93.
- 31 Walter Ott and Franziska Buob, 'Did Legal Positivism Render German Jurists Defenceless during the Third Reich?' (1993) 2 *Social & Legal Studies* 91 at 92-3; John Bell, *Judiciaries within Europe: A Comparative Review* (CUP, 2006) at 128.
- 32 Richard J Evans, *The Coming of the Third Reich* (Penguin, 2004) at 135.
- 33 Richard J Evans, *The Coming of the Third Reich* (Penguin, 2004) at 135.
- 34 Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (HUP, 1991) at 8; Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany* (University of Chicago Press, 1998) at 2.
- 35 Walter Ott and Franziska Buob, 'Did Legal Positivism Render German Jurists Defenceless during the Third Reich?' (1993) 2 *Social & Legal Studies* 91 at 94; Richard J Evans, *The Coming of the Third Reich* (Penguin, 2004) at 136-7. See also V. R Berghahn, *Modern Germany: Society, economy and politics in the twentieth century* (CUP, 2nd ed, 1987) at 76.
- 36 Richard J Evans, *The Coming of the Third Reich* (Penguin, 2004) at 135.
- 37 Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (HUP, 1991) at 15-6.
- 38 John P Dawson, 'Effects of Inflation on Private Contracts: Germany, 1914-1924' (1934) 33 *Michigan Law Review* 171 at 192-3, 198.
- 39 David B Southern, 'The Revaluation Question in the Weimar Republic' (1979) 51(1 – On Demand Supplement) *The Journal of Modern History* D1029 at D1035. See also, John P Dawson, 'Effects of Inflation on Private Contracts: Germany, 1914-1924' (1934) 33 *Michigan Law Review* 171 at 205-211.
- 40 David B Southern, 'The Revaluation Question in the Weimar Republic' (1979) 51(1 – On Demand Supplement) *The Journal of Modern History* D1029 at D1035.
- 41 John Bell, *Judiciaries within Europe: A Comparative Review* (CUP, 2006) at 128.
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