Fall 1979

Review of Owen Fiss, The Civil Rights Injunction

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The Civil Rights Injunction. OWEN M. FISS. Indiana University Press, Bloomington, 1978. Pp. vi, 117. $10.95.

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Owen Fiss's terse, insightful study adds a new dimension to our understanding of that elusive quality, equity. Fiss has written a provocative and stimulating study of one of the law's basic components. I will begin with a warning: the work's short length belies its heft. I began to read thinking that I would finish the entire book in one sitting, but after two hours, I found that I had taken so much time to reread passages and evaluate previously unexamined premises that I had completed less than twenty-five pages.

Infused with the spirit of liberalism and judicial activism, Fiss attempts to reunite injunctions with fundamental notions of equity and rehabilitate the injunction as a remedy. The author reminds us first that late nineteenth- and early twentieth-century judges granted many injunctions to suppress organized labor.[1] Injunctions became associated with heavy-handed government by a conservative judiciary,[2] and observers began to identify injunctions with the substantive assertions of management and the interests they served.[3] Frankfurter and Greene's book, *The Labor Injunction,*[4] focused the nation's attention on the way a business-oriented judiciary abused the injunctive remedy to defeat labor.[5]

During the depression the political climate for labor changed; Congress passed the Norris-LaGuardia Act,[6] taking the federal judiciary out of the labor-injunction business,[7] and newly appointed federal judges became more attuned to the aspirations of the common people. Frankfurter and Greene had succeeded in persuading the New Deal generation of the desirability of restricted use of injunctions.[8] With *Brown v. Board of Education II*,[9] however, injunctions became associated with the civil rights movement, because in

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[1] O. FISS, THE CIVIL RIGHTS INJUNCTION 1 (1978) [hereinafter cited without cross-reference as FISS].

[2] *Id.* at 2.

[3] *Id.* at 3.

[4] F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION (1930).

[5] FISS at 4.

[6] Pub. L. No. 74-65, 47 Stat. 70 (1932) (current version at 29 U.S.C. §§ 101-115 (1976)).

[7] FISS at 3.

[8] *Id.* at 4.

[9] 349 U.S. 294 (1955).

that case the Court ordered the federal courts to "be guided by equitable principles"[10] in dismantling segregated education. The injunction then seemed to many an instrument of a moral imperative to vindicate the compelling demand for racial justice.

The Civil Rights Injunction develops two major themes. One of these is centered on Fiss's assertion that a hierarchy of remedies exists in which injunctions are considered a disfavored remedy.[11] Judges grant injunctions, Fiss explains, only when the plaintiff's injury is irreparable, when other remedies are inadequate.[12] Fiss contends that once we divorce the injunction from its historical substantive contexts and compare it with equivalent legal instruments such as criminal statutes and tort liability rules,[13] the injunction cannot be considered solely a remedy of last resort. All remedies, he concludes, should be considered of potentially equal applicability, and judges should award the best remedy available under the circumstances.[14]

Fiss's other chief contention concerns the long-accepted view that injunctions are of two varieties, labeled by some as interlocutory or final, and by others as mandatory or prohibitory. Fiss argues that there are in reality three related but discrete subspecies of the beast injunction subsisting side by side.[15] The first is the traditional preventive injunction,[16] a personalized interdiction grounded in conventional doctrine. It forbids a losing litigant to trespass, infringe the copyright, or dig the canal, and it threatens criminal contempt as the sanction for violation. Next, Fiss discusses the reparative injunction;[17] it directs the miscreant who has done something wrong to cease, and possibly also to do it over, but correctly this time.[18] Fiss refers to this type of remedy as compensation in kind,[19] or as an in-kind damage judgment.[20] Finally, Fiss identifies and describes a third type of injunction, which he terms the structural injunction.[21]

Naming the structural injunction and articulating some of its

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[10] *Id.* at 300.
[11] Fiss at 1.
[12] *Id.* at 2.
[13] *Id.* at 8-9.
[14] *Id.* at 6.
[15] *Id.* at 7.
[16] *Id.* at 7-8.
[17] *Id.* at 8.
[18] *Id.* at 10.
[19] *Id.* at 13.
[20] *Id.* at 35, 55.
[21] *Id.* at 9.

general characteristics are Fiss's major contributions to our continuing effort to understand equity. Judges use structural injunctions to reorganize existing governmental institutions, such as schools, mental hospitals, and prisons, because they find that the ways the authorities operate the institutions violate the Constitution.[22] Structural injunctions differ fundamentally from other types of injunctions. The in-kind damage awards associated with reparative injunctions are necessarily inadequate in these situations. Citizens are entitled as an original matter, for example, to enjoy a unitary school system, to be treated when institutionally committed, or to be free of cruel and unusual punishment.[23] Furthermore, unlike preliminary injunctions or temporary restraining orders,[24] structural injunctions almost never spring full-blown into being without notice and a hearing. Indeed, they are issued in conjunction with protracted hearings, detailed findings, and multiple submissions of plans.[25] This procedural aspect of structural injunctions is responsible for much of their uniqueness.

Granting and administering structural injunctions calls upon trial judges to exercise almost superhuman powers. Classes seeking injunctive relief are often massive and often comprised of people unable either to speak articulately for themselves or to choose able representatives. Intervenors and amici clamor for attention. Judges must sense unarticulated possibilities and possess the judgment to marshal responsible public opinion. To channel information and observe performance, judges create ancillary bureaucracies of masters, monitors, and councils. If the enterprise is to prosper, the judge will form at least a tacit emotional and intellectual alliance with the spending and taxing power which must provide the wherewithal.[26] The process perforce threatens the judge's impersonal and passive posture, and judge as umpire loses to judge as catalyst or manager.[27] As Fiss felicitously remarks in another context, "It was not reasonable to expect the judges to be heroes, but the truth of the matter is that many lived up to these unreasonable expectations . . . ."[28]

The process of enforcing a structural injunction develops the continuity of an extended relation, because the relationship be-

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[22] *Id.* at 10-11.

[23] *Id.* at 10.

[24] *Id.* at 28.

[25] *Id.* at 36-37.

[26] Schelling describes a similar process in his discussion of "tacit bargaining". T. SCHELLING, THE STRATEGY OF CONFLICT 58-67 (1960).

[27] FISS at 30-31, 37.

[28] *Id.* at 90 (referring to the ability of judges to acquire specialized knowledge).

tween the judge and the parties is consultative rather than adversarial. Structural injunctions are seldom enforced with either criminal or truly coercive contempt,[29] for example, because judges seeking to secure cooperation sense that throwing a school board member into gaol may not be the best way to improve conditions in the schools. Accordingly, plaintiffs move for supplemental relief, and defendants move to dissolve, modify, or clarify; but no one mentions contempt, for that would be bad form. The judge and the plaintiff want to co-opt the defendant and induce him to collaborate. They may come around to contempt after a long period of trying other measures, but a punitive contempt fine or a sentence of imprisonment (or for that matter, any immediately coercive tactic) would surprise observers. People who wish to work with others in the future wisely avoid the false Carthaginian peace of total victory and complete submission which exacerbates tensions and prevents meaningful give and take in the future.

Fiss's examination of structural injunctions does more than merely explain existing practices. By focusing on the unique procedural framework of the structural injunction, Fiss compels us to look again at traditional procedure, the judicial process, the adversary system, and the role of the judge. Cast in the traditional mold of contentious, self-contained, bipolar, and retrospective litigation, much procedure is anachronistic in the sprawling, future-oriented, multi-faceted environment of structural litigation.[30]

Indeed, one could well conclude that most of the received body of material taught and understood under the traditional title "equity" will serve the needs of lawyers in the last quarter of this century inadequately. A realistic, modern equity should take the place of much of the profession's present concepts of equity to provide the theoretical and pragmatic foundations for dealing with emerging issues. As our society evolves, bureaucracy becomes increasingly prominent and the major issue of our time is how best to protect individual autonomy from the excesses of the social-service state. The right to ask a judge to exclude another from a particular piece of earth diminishes in importance as a right to a status or entitlement increases.[31] I hope that Fiss's analysis of the structural injunction marks the advent of a legal literature on these complicated problems that have until recently been neglected.

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[29] *Id.* at 36.

[30] *See generally* Chayes, *The Role of the Judge in Public Interest Litigation*, 89 HARV. L. REV. 1281 (1976).

[31] *See* Reich, *The New Property*, 73 YALE L.J. 733 (1974).

Although they should not interfere with an author's plenary prerogative to write his own book, reviewers perpetually indulge their proclivity for narrow carping at the author's expense, and this reviewer is no exception. Legal prescriptions often follow ideological diagnoses, and Fiss's liberalism shapes his attitude toward structural injunctions. "Law," wrote Morton Horwitz about a decisive period in American legal history, "is no longer merely an agency for resolving disputes; it is an active, dynamic means of social control and change."[32] While Fiss perceives the structural injunction as an agency to mollify the abuses of a social-service state, and thus adopts an attitude similar to that expressed by Horwitz, I think that a remedy should be subjected as little as possible to the ideological sympathies of a particular era. Conservatives may one day exterminate civil rights structural injunctions just as liberals once disarmed labor injunctions. Moreover, liberals should formulate broader goals than the mere amelioration of hardship and the humanization of treatment in prisons and mental hospitals; civilizing society with structural injunctions may degenerate into papering over cracks, keeping social tensions from surfacing as political expression, and ignoring the underlying sources of injustice, discontent, and racial and economic inequality.

In deciding whether to enjoin, judges consider whether a plaintiff possesses an adequate remedy at law or whether his injury is irreparable in terms of money damages. This practice creates the remedial hierarchy that, after the development of the structural injunction, is the second major focus of Fiss's book. Fiss correctly assails the remedial hierarchy,[33] particularly the irreparable-injury prerequisite expressed in *Younger v. Harris*.[34] (Indeed, in an earlier article he criticized the *Younger* opinion's reliance on antiquated and superficial notions of federalism.[35]) The maxims of equity express wise policies about the legal process, but policy can ossify into cliché, and cliché can impede the operation of a rational remedial mechanism.[36] This is especially likely since views about adequacy and irreparability are closely linked to variable attitudes about substantive standards and judicial activism. Let us examine the adequacy-irreparability requirement to determine whether it con-

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[32] M. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 155 (1977).

[33] FISS at 84-85.

[34] 401 U.S. 37 (1971) (denying injunctive relief in federal court when a state prosecution was pending). *See* FISS at 63.

[35] Fiss, Dombrowski, 86 YALE L.J. 1103, 1118 (1977).

[36] *See Developments in the Law—Injunctions*, 78 HARV. L. REV. 994, 996 (1965) (equitable fictions).

tinues to serve a useful purpose.

The court system is the crucible of government. Most people comply with the law as promulgated by a legislature or an appellate court. But if recalcitrants decline to obey precedent or statute, legislatures and appellate courts pass enforcement to trial courts. Trial judges use remedy to transform legal abstractions into practical policy. An injunction is one method of enforcing a plaintiff's substantive entitlement; and it may personalize a constitutional, contract, tort, or criminal law duty expressed universally by a legislature or appellate court.

Scholars often perceive the judicial process as more than a method of enforcing particular entitlements; they tend to view it as a means of creating and expressing public policy. In so doing, however, they ignore something practicing lawyers know: the court system normally enforces only those public policies we already have. Thus, when a creditor obtains a judgment to utilize certain collection techniques, or a farmer secures an injunction to prevent a road contractor from driving earth-moving equipment across his fields, neither the judgment nor the injunction enforces itself. Scholars stress the policy-making aspects of *Brown* but ignore the fact that no single injunction issuing from the *Brown* decision succeeded in desegregating schools in the Deep South. That required a lengthy series of subsequent individualized, specific injunctions.[37]

Nevertheless, courts do attempt to use injunctions to express public policy, and two important procedural consquences follow from such expressions. First, the court's will is effectuated both without the consultation of a jury and by means of coercive enforcement. Instead of summoning a jury to decide most issues of injunctive relief, the court system excludes the public; the plaintiff's substantive right is apparently so important that judges refuse to entrust it to a jury. This resembles the law side's directed verdict: even where the seventh amendment mandates a jury, the judge's deference to the jury often varies indirectly with the possible consequences the judge attaches to an incorrect jury decision. The judge directs a verdict in a particular trial to preserve the integrity of the substantive law[38] and to circumvent biased factfinding. A ruling that plaintiffs lack an adequate remedy at law in a group of controversies represents a more generalized decision to prevent jurors from

[37] For a description of how structural injunctions are administered over time in ways that generate such a series, see FISS at 36-37.

[38] Cooper, *Directions for Directed Verdicts: A Compass for Federal Courts*, 55 MINN. L. REV. 903, 907 (1971).

finding facts and formulating remedies.

Second, instead of enforcing a decision for the plaintiff impersonally by sending the sheriff to seize the defendant's property, a judge enforces an equitable order against a refractory defendant personally. Courts use contempt to secure for equity's suitors the means to enjoy what the substantive law guarantees. A statement that money damages are inadequate in a class of controversies means that in those cases judges will prevent people from impinging upon certain substantive rights and paying damages. The adequacy-irreparability requirement thus serves to identify those cases in which the plaintiff's entitlement is too important either to submit to possible jury nullification or to be "bought up" by a paying defendant. This is what courts mean when they say that a jury trial for damages is inadequate because the injury is irreparable.

Normally, if a decision to enjoin means that a plaintiff's right is too important to allow a defendant to thwart it and pay, then society, through judges, says that some things are too important to value in money. An example will demonstrate this point. *Walker v. City of Birmingham*[39] grew out of a decision by civil rights activists to ignore an Alabama circuit court injunction proscribing marches through Birmingham on Good Friday and Easter Sunday, 1963. Several marchers were charged with criminal contempt. The United States Supreme Court ruled that those who violate an injunction cannot defend themselves against a charge of contempt by arguing that the injunction is unconstitutional. This ruling prevented the civil rights leaders from asserting that their violation of the injunction was protected by the first and fourteenth amendments. Natural-law and legal-realist views confront one another in the Supreme Court opinion. The majority held that even the civil rights leaders must adhere to the injunction's apparently correct temporal authority,[40] but the Court included (as an appendix) a public statement of the activists, who insisted that they would obey *the law* but not Alabama circuit court injunctions.[41]

We had a heated class session discussing *Walker*'s political and social setting, what the rule implies, and whether the exceptions for substantive high-handedness[42] and procedural overreaching[43] are

[39] 388 U.S. 307 (1967). For general background, see A. WESTIN & B. MAHONEY, THE TRIAL OF MARTIN LUTHER KING (1974).

[40] 388 U.S. at 320-21.

[41] *Id.* at 323-24 (appendix B).

[42] *See id.* at 315.

[43] *See id.* at 318.

justified and workable. Toward the end, I reminded a realist student that the city of Birmingham had posted a $2,500 bond. I said, "If you represented the ministers, would you tell them that the injunction was wrong, but that they should cancel the Good Friday and Easter marches and recover the injunction bond?" The students felt that my question was a bad joke, and not even those who had argued in favor of the majority felt the need to respond rationally. That day's discussion demonstrated to me how ludicrous it is to suggest that Martin Luther King might have traded his right to march against segregation in Birmingham for $2500 of the city's money. The lesson applies to plaintiffs as well as defendants: a society that posits basic rights cannot allow people to interfere with others' rights and simply pay for the harm done. Courts must enjoin at times to preserve the moral imperative of substantive rights.

The moral adequacy of monetary relief is not, however, the sole element a court considers in deciding whether to enjoin. Judges also have process reasons for asking whether money awards would be adequate to preserve particular values. On the one hand, the money remedy is easier to administer. When the clerk enters the judgment, the judge's duty almost always ends. If necessary, the sheriff levies a writ of execution on the judgment debtor's property; and even in the collection process, courts and legislatures prefer that the creditor exhaust the impersonal execution process before resorting to personal collection measures.[44] In personam relief is delicate, time-consuming, and expensive. Coercive enforcement may also be messy because the people involved are often not the most pliable members of the human race.[45] The factual questions involved are intractable, turning on motive, ability, and intent; and incorrect factfinding may result in the imprisonment of someone in an effort to coerce the impossible.[46]

On the other hand, adjudicating rights, formulating an equitable remedy, and enforcing the remedy blend into one another; and in a lawsuit that may last for years, the system seeks judicial continuity, expertise, and flexibility. Jurors go home after the trial, whereas a judge can retain jurisdiction and review the progress of the parties in carrying out injunctive relief for a sustained period. There is also an element of elitism involved; where the schools are segregated, we exclude the jury because even with summary judg-

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[44] *See* 1 G. GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES § 28 (1940); H. MCCLINTOCK, THE PRINCIPLES OF EQUITY § 210 (2d ed. 1948).

[45] *See, e.g.*, Webber v. Gray, 228 Ark. 289, 307 S.W.2d 80 (1957).

[46] Dobbs, *Contempt of Court: A Survey*, 56 CORNELL L. REV. 183, 272 (1971).

ments and directed verdicts, we fear the same pressures that segregated the schools will keep them segregated.

A finding that money damages would be inadequate commits a judge to the issuance of an injunction, and issuing an injunction raises the possibility that the judge will have to charge a party with contempt. This possibility of a contempt judgment also enters into a judge's decision whether to enjoin. A remedy for the breach of an injunction should advance the injunction's substantive purpose.[47] Courts enjoin only when the defendant should not be allowed to flout the plaintiff's rights and then pay the plaintiff for the harm suffered. The remedy for disobeying an injunction should advance this substantive standard and the policies behind the general refusal to enjoin when a plaintiff possesses an adequate damage remedy.

Courts have developed two types of contempt, civil and criminal. Since there are also two subtypes of civil contempt, coercive and compensatory, there appear to be three branches of contempt in all. Through compensatory contempt, the defendant pays the plaintiff what the breach cost the plaintiff; through coercive contempt, the judge, to achieve compliance, fines or imprisons or threatens to fine or imprison the defendant; and through criminal contempt, the judge punishes the defendant to vindicate the public interest in securing obedience to judicial orders. Do contempt judgments advance the substantive and remedial purposes of the injunctions they enforce?

Neither criminal nor compensatory contempt allows a plaintiff to enjoy his substantive rights, since both are retrospective, occurring after the defendant has violated those rights. Criminal contempt is no more effective in preserving substantive rights, since its purpose is to convey to the public the message that court orders must be obeyed. Furthermore, a compensatory contempt judgment admits a certain degree of failure by directing the contemnor to pay the plaintiff money, the remedy previously considered inadequate. Since criminal and compensatory contempt do not adequately safeguard a plaintiff's sustantive rights, judges should resort to criminal and compensatory contempt only when it is too late to coerce.

Coercive contempt is not really an equitable sanction, but more analogous to the law's writ of execution. It seeks to achieve conduct by altering incentives, putting the screws on the defendant to permit the plaintiff to enjoy the actual right. The judge fines or threatens to fine and jails or threatens to jail in a calibrated fashion to

[47] D. DOBBS, REMEDIES § 1.2 (1973).

create an incentive to obey. Actually, a coercive contempt judgment pursuant to an injunction is analogous to a second injunction with the penalty specified, because the judge is simply stating the first injunction in modified terms and restating the consequence of failing to comply.[48] The contemnor is often said to control the jailhouse keys, and may avoid the sanction completely by obeying the injunction; but as with threats to retaliate generally, the threatener hopes that the threatened will cooperate and that it will prove unnecessary to carry out the promise.

Coercive contempt is the way courts secure for the winner the benefit of victory. By resisting enforcement, a contemnor may focus our attention on how firmly we adhere to substantive policy and the decision that the plaintiff's remedy at law is inadequate. Whether the judge possesses the nerve to administer coercive contempt is relevant to whether the judge should enjoin at the outset, for to enjoin but to refuse to coerce puts a premium on recalcitrance and dilutes the plaintiff's substantive right.

Thus, I think that courts have practical administrative and process reasons for declining to enjoin and remitting a suitor to damages. They acknowledge these reasons by stating the requirement that the remedy at law must be inadequate. If judges administer the requirement in light of society's aspirations and its underlying policies, the adequacy prerequisite is salutary. This may be a roundabout way of saying I disagree with Fiss's contentions that injunctions are at the bottom of a remedial hierarchy. In fact, courts already appear to be making the injunctive decison on a case-by-case basis similar to the way that Fiss contends they should. The difference is that the criteria that courts use in making their case-by-case evaluations are rooted in process, rather than substantive, considerations. Fiss chooses to ignore this aspect of the injunctive mechanism, and instead posits the existence of a remedial hierarchy.

In addition to his attack on the adequacy-irreparability requirement, Fiss assails another theory he believes partially responsible for the view that injunctions are a generally disfavored remedy—the doctrine of prior restraint. The doctrine places a burden on injunctions against speech by insisting that for an injunction to issue, the speech must not only be unprotected, but must also be unprotected in "some dramatic, clear and special way."[49] In effect, the doctrine creates a remedial double standard by subjecting injunctions restricting speech to a more severe test of validity than other legal

[48] *See* Fiss at 36-37.

[49] *Id.* at 40 (citing Near v. Minnesota, 283 U.S. 697, 716 (1931)).

regulations of speech, such as criminal statutes and tort-liability rules.[50] Elsewhere I have maintained that the phrase "prior restraint" results in much imprecision of analysis and tends to obscure rather than clarify.[51] Fiss adds an additional count to the indictment of prior-restraint rubric by arguing that traditional analyis also fails to distinguish injunctions from sanctions. Fiss redirects us into proper channels by treating an injunction not as a type of sanction, but as a legal tool more comparable to a statute that establishes a standard, and by comparing only the ensuing contempt judgment to the criminal sanction. Thus, calling an injunction a prior restraint which freezes speech, and calling a criminal prosecution a subsequent punishment which merely chills speech, is a false distinction because contempt after violation of an injunction is no more prior than a criminal prosecution.[52]

I maintain that courts should cease using the phrase "prior restraint" in determining whether injunctions violate the first amendment. The proper inquiries are what procedure is necessary to assure that the issues are fully considered, and whether the order is phrased to avoid impinging on constitutionally protected conduct. There are two reasons to treat injunctions differently from tort duties and criminal statutes: the procedure followed to secure injunctions is juryless and may be ex parte, and the court adjudicating a contemnor's charged violation may wield the *Walker* rule to forbid substantive arguments against the injunction. These considerations justify careful analysis of the procedure leading up to injunctions and scrutiny of the content of injunctions, but they do not justify invoking what has become the obscurity and imprecision of the prior-restraint doctrine.

Much of this book review has dealt with injunctions in a context of relatively recent social movements concerning such issues as free speech, civil rights, and labor. This may convey the erroneous impression that the debate over the proper workings and objectives of injunctions is a recent development; indeed, the earlier discussion of the structural injunction may have tended to demonstrate that it was solely a contemporary phenomenon. We should note in passing, however, that the structural injunction may not be entirely new. In early England, equity's original jurisdiction allowed the oppressed to evade their immediate overlords and to address the

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[50] Fiss at 40.

[51] *See* Rendleman, *Free Press—Fair Trial: Restrictive Orders After* Nebraska Press, 67 Ky. L.J. 867, 895-900 (1979).

[52] *See* Fiss at 70.

sovereign conscience. The chancellor redressed the grievances of those deemed too weak and powerless to receive justice in the common-law courts.[53] Any analogy from a feudal society with the chancellor's centralizing facility to the late twentieth-century United States will be imperfect. A federal judge, at the behest of a black plaintiff, ordering Alabama officials to obey the national government's law acts, however, on the same premise as those early chancellors.[54]

However novel, structural injunctions are unquestionably archetypes of judicial activism. Typically, a federal judge importuned by those who lack alternative means of access to the corridors of power thwarts the popular will as expressed by a state or local government. Summoning affirmative conduct from the erstwhile managers, the judge commands resources and undertakes to supervise the details of management himself. Critics express reservations about both the results and the fluid nature of the process, but they tend to overlook the importance of the constitutional rights involved, the role of courts in the educational process of politics, and our society's quest for justice. Fiss closes *The Civil Rights Injunction* with this sentence: "Shrouded in the mantle of the Constitution, dedicated to the reasoned elaboration of our communal ideals, courts have a unique capacity to create the terms of their own legitimacy."[55]

I must add in counterpoint, however, that structural injunctions must also conform to our concept of limited government as expressed in doctrines of separation of powers and federalism. In a day of the social-service state and judicial activism, limitations on government are primarily procedural: before courts act, they feel compelled only to notify affected people and extend an invitation to participate. A court order compelling anyone who knows about it to obey interferes with both the legislature's power to create general rules of conduct and the defendant's right to a trial by jury.[56] If these generalizations are true for a structural injunction, which will not be vigorously enforced with contempt, they are perforce true of preventive injunctions. In a rush to protect and ensure beneficiaries'

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[53] *See* F. MAITLAND, EQUITY 5-6 (2d ed. 1936); Dunbar, *Government by Injunction*, 13 LAW Q. REV. 347, 359 (1897).

[54] *See, e.g.*, Adams v. Mathis, 458 F. Supp. 302 (M.D. Ala. 1978).

[55] FISS at 95.

[56] For an exposition of the ways in which the use of the so-called "community injunction," for example, extends beyond the limits of equitable power, see Comment, *Community Resistance to School Desegration: Enjoining the Undefinable Class*, 44 U. CHI. L. REV. 111 (1976).

constitutional rights, we should not forget the procedural protections traditionally used to resolve conflict and prevent interference with the procedural rights of wrongdoers.

These captious remarks should not detract from Fiss's straightforward scholarly prose, fresh perspective, and discerning thought. He brings us a consistently high level of critical analysis coupled with forceful moral passion. These features place him in the honorable tradition of American equity, a worthy successor to Huston and Chafee.[57] I recommend *The Civil Rights Injunction* to all who study and practice the law. In an age of social selfishness and narcissism, *The Civil Rights Injunction* may redirect a part of our consciousness to a more humane understanding of our society and a more vigorous response to some of its problems.

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[57] Preeminent examples of these authors' works in the field include C. HUSTON, ENFORCEMENT OF DECREES IN EQUITY (1915), and Z. CHAFEE, SOME PROBLEMS OF EQUITY (1948).