

LAW AND CONTEMPORARY PROBLEMS

Volume 61

Summer 1998

Number 3

FOREWORD

PHILIP S. ANDERSON*

The title of the conference at which these papers were presented—*Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice*¹—was inspired by *Federalist No. 78*. In that essay, Alexander Hamilton wrote:

If, then, the courts of justice are to be considered as the *bulwarks* of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.²

Hamilton understood well the general tensions in our tripartite system of government. In particular, he noted the tension between judicial independence and judicial accountability in our compound republic.

In December 1998, leaders of the Bench, the Bar, and the Academy gathered in Philadelphia—a most appropriate venue—to revisit and think anew about these enduring tensions. In addition to many others, some thirty state Chief Justices or their designees attended. Constitutional scholars gave us a history lesson on separating judicial power. Panel discussions included judicial discipline, judicial selection and retention, and the relationship between the judiciary and the two political branches of government. An important case study considered the television advertising used in a recent judicial election in Ala-

Copyright © 1998 by Law and Contemporary Problems

This foreword is also available at <http://www.law.duke.edu/journals/61LCPForewordAnderson>.

* President, American Bar Association.

This foreword is adapted from President Anderson's remarks at the conference described herein.

1. The conference was held December 4-5, 1998, at the Four Seasons Hotel in Philadelphia.

2. THE FEDERALIST NO. 78, at 469 (Alexander Hamilton) (emphasis added) (Clinton Rossiter ed., 1961).

bama. This volume collects the valuable scholarly papers that informed all of the discussions in Philadelphia.

The symposium participants examined judicial independence, both the flower and the thorns. The central problem that emerged from the symposium was the issue of campaign contributions to elected judges and the accompanying threat to judicial integrity. This came as no surprise: The problem has gathered increasing attention in our society, and it cries out for resolution.

In addition, Justice Breyer reminded participants that judicial independence is required for a stable society and is indispensable to a prosperous society. Justice Kennedy emphasized that there cannot be an independent judiciary without an independent legal profession, and that judicial independence can thrive only when the public understands that it is essential to a free society.

My thanks to the Justices, the scholars whose essays appear in this volume, and all the other panelists and participants in the symposium. Your work allows us to see the difficult issues of judicial independence and accountability in brighter colors than before. I also thank Paul Carrington and *Law and Contemporary Problems* for bringing these essays to a wider audience.

Where do we go from here? We go back to our states with the insights we have gained. We also continue to think about judicial independence and accountability. Finally, we prepare for a national conference to develop a strategy for educating the public about the critical link between judicial independence and liberty.³

3. The National Conference on Public Trust and Confidence in the Justice System, co-sponsored by the American Bar Association, the Conference of Chief Justices, the Conference of State Court Administrators, and the League of Women Voters, will be held May 13-15, 1999, at the Renaissance D.C. Hotel in Washington, D.C.