

3-2004

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Recommended Citation

Rodney A. Smolla, *Chief Justice Harry L. Carrico and the Ideal of Judicial Independence*, 38 U. Rich. L. Rev. 571 (2004).

Available at: <https://scholarship.richmond.edu/lawreview/vol38/iss3/4>

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INDEPENDENCE OF THE JUDICIARY

CHIEF JUSTICE HARRY L. CARRICO AND THE IDEAL OF JUDICIAL INDEPENDENCE

*Rodney A. Smolla **

Judicial independence is an ideal as old as the art of judging itself. Indeed, it is an ideal central to the very idea of justice. Our legal tradition is largely built upon the notion that judges are to decide cases according to the evidence and the law. A judge who decides a case based on political “influence” is normally regarded in our culture as failing to live up to the highest traditions of the judiciary, and in extreme cases, as basely corrupt.

The ideal of judicial independence, however, does not exist in a vacuum. In an open and democratic society, values of judicial independence always operate in counterpoise with values of democracy and accountability. There is at times some tension here, and that is natural and healthy. Some degree of tension is inherent in any well-functioning system of checks and balances—the tension is part of the connective dynamic that creates the check and supplies the balance.

A large part of the puzzle of judicial independence is determining how we as a society maintain the spirit of democracy and accountability, and yet give to judges the space and insulation they need to strive to do justice. What we have learned in the collected experience of more than two hundred years is that the best solution to the puzzle is a solution that creates a structure that inten-

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tionally and consciously removes judges from the direct operation and influence of politics. When it is operating in a healthy mode, the federal system achieves this through the nomination and lifetime tenure model. When it is operating in a healthy mode, the Virginia system achieves this through the legislative selection and reappointment process. Both systems require a degree of restraint by the political branches, a restraint that is grounded in the fundamental assumption that the task of adjudicating cases is *not* an exercise in pure politics, but an exercise in the rule of law.

The Framers of the Constitution of the United States did not create a system of direct democracy. They created a republic, and divided power. The idea of democracy is not America's great contribution to human history. America's great contribution is the idea of rights. The power of independent judges to exercise independent judgment is a cornerstone of this system. There is nothing wrong with intense debate over the merits of legal disputes. This is a sacred First Amendment right. Citizens and members of legislatures are entitled to rail against the courts when they do not like judicial rulings.

But there is something profoundly wrong about turning disagreement over a judge's ruling into a case for a "litmus test" for continued appointment on the bench. When reappointment turns on whether one's rulings are pleasing to the political powers-that-be, the core of judicial independence is threatened, and with it, the core of the system of justice itself.

As Dean of the University of Richmond School of Law, I am pleased to present, on behalf of all of us associated with the law school's extended community, this wonderful symposium issue of the *University of Richmond Law Review*, published to mark and honor the occasion of Chief Justice Harry Carrico's retirement from the position of Chief Justice of the Supreme Court of Virginia. Our law school was honored to co-host the ceremonies commemorating Chief Justice Carrico's retirement, and to host, as the keynote speaker of that event, the Chief Justice of the Supreme Court of the United States, William Rehnquist. We wish to thank all who helped support that program. This issue of the *University of Richmond Law Review*, publishing the scholarly contributions of those who participated in the symposium and those who have since added their scholarly efforts to the themes

addressed there, is made possible through the generous support of the family of George E. Allen, as part of the annual Allen Chair Symposium program. We wish to also thank Justice Donald Lemons of the Supreme Court of Virginia, who contributed through his leadership and energy to help organize the symposium and tribute to Chief Justice Carrico.

Senior Justice Carrico's career has been distinguished by an unflagging commitment to the highest traditions of the judiciary and the profession. We are especially pleased at the University of Richmond to note that Senior Justice Carrico will be joining our institution in January 2004 in a more formal role, visiting as our Professor of Law and Civic Engagement. This role will help provide Senior Justice Carrico with the platform from which to continue to speak out and engage law students, lawyers, policymakers, and the public on the ideals of judicial independence, civility in legal practice, and civic commitment that are so strongly identified with his leadership over the years.

I commend the members of the *University of Richmond Law Review* for their fine work on this symposium issue, and once again extend the law school's thanks to all who participated and helped make it possible. Above all, I extend our entire community's warmest feelings of congratulations and welcome to Senior Justice Carrico.
