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Foreword

Shining a Light on the Rights of the Most Vulnerable

by SHAUNA MARSHALL*

In this fall issue, *Hastings Constitutional Law Quarterly* examines the way our laws affect the most vulnerable segments of our population: undocumented immigrant youth, women facing unwanted pregnancies and entering careers in the military, criminal defendants with prior felony convictions, and people of color trying to ensure that their histories are included in our educational systems. The challenges presented in this volume, among others, will define us as a nation. For future generations will inevitably judge the way we either protected or failed to protect the most vulnerable members of our community. And, since the election of Donald Trump as President of the United States, our commitment to and protection of the vulnerable, through our laws and constitution, have been placed in great jeopardy. Parts of our society are in the throes of a dangerous celebration of nationalism and isolationism, a celebration that includes disdain for those who are most marginalized in our country.

Alexander Hamilton, the mercurial first United States Treasury Secretary, whose story has been brought to light in the recent musical *Hamilton*, opined over 200 years ago that American democracy would be spoiled by demagogues who mouth populist rhetoric to conceal despotism.¹ He feared that with that type of government the independence of the judiciary would also be destroyed and wrote, “who is so blind as not to see the right of the legislature to abolish judges at pleasure destroys the independence of the judiciary?”² He understood that without an independent judiciary the Constitution is a worthless document. The politics of today and the recent

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1. THE EXAMINATION NUMBER XIV (Alexander Hamilton).

2. *Id.*

and unprecedented blockage of President Barack Obama's proposed Supreme Court justice make us all wonder if Hamilton was indeed prescient in his fears.

I believe, however, that this is a pivotal time in American history. The angst and deep political divides that now plague our nation present an opportunity; an opportunity to assess how we landed where we have and what do we need to do to be the beacon of liberty and justice for all, not just for the powerful. For me, the answer is learning our history in all its glory and contradictions. We need to understand the barriers, legal and otherwise, put in place by our forefathers (yes, fathers because we women were told to watch at the sidelines) that have kept women, people of color, the queer, immigrants, and felons marginalized. We must learn that alongside a brilliant and enlightened form of government has been a systemic exploitation of those considered "the other." From the vicious slave codes enacted by Virginia before we were a nation to the unlawful expulsion of Mexicans in the 1950s, this nation has wrestled with its conscious. We have locked up Japanese-Americans based on prejudices and unfounded suspicions; we have kept Puerto Rico, Guam, and other "territories" as second-class colonial states; we have failed to extend the bounties of the G.I. Bill to African Americans; and we have undermined Native American sovereignty at every turn and allowed genocide of indigenous peoples as we pursued our manifest destiny. Yet we have a constitution and a form of government that has aspirations of justice and fairness that is unprecedented in world history. And, with fits and starts, we have, in limited moments, lived up to the promise found in our constitution. We entered into treaties with Native Americans, we fought a war to end slavery, we had a brief period of reconstruction and enactment of modern civil rights laws, we extended citizenship to immigrants from Asia, and we elected an African-American person as President. Yet, we are not able to sustain these moments of progress.

I know that justice means constant vigilance against the forces of oppression and I believe the first step in that process is education. For the optimist in me believes if Americans knew their true history, our better angels would prevail. We would understand that all of us have not been treated fairly under the law and we would support policies that level that playing field. Instead of enacting state laws to ban ethnic studies we would celebrate learning about all of us who call ourselves Americans: our struggles for justice, our contributions to our nation, and our right to be here. In this issue, the *Constitutional Law Quarterly* does just that: It shines a light on those who are most vulnerable and whose quests for justice often remain elusive. Bravo CLQ!