

SECOND WORLDWIDE COMMON LAW JUDICIARY CONFERENCE

Maintaining an Independent Judiciary Budgets, Congress and the Executive

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I talk to you today about the unwritten dynamics of our Constitution. Our founding fathers theorized that the three branches of our government should be separate. They understood, however, that in practice each must depend upon and must work with the others. In the Federalist 78, writing in defense of the Constitution, Alexander Hamilton showed remarkable foresight about the potential deficiencies of their plan:

“The complete independence of the courts of justice is particularly essential in a limited constitution ... The judiciary is the weakest of the three departments of power ... it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches ... all possible care is requisite to enable it to defend itself against their attacks.”

You will not find the words “separation of powers” in the United States Constitution, but the idea, which Alexander Hamilton expressed so well, operates powerfully every day in Washington as the Federal Judiciary seeks appropriated funds. How the judiciary does this and yet maintains its independence is the story I tell you today. I might add that it works in a most fascinating way.

The Appropriations Clause of the Constitution states: “No money shall be drawn from the treasury, but in consequence of appropriations made by law.” What is the consequence if Congress, strapped for funds or unhappy with the judiciary, threatened to limit judicial funding?