

appointed by the colony's governor and served at his pleasure. Finally, during the early state period, after the adoption of the New York Constitution of 1777, significant steps were taken toward increasing the independence of the judiciary. Judges of the supreme court and the county courts were selected by a council of appointment—rather than by the governor—and they held office during good behavior (though they faced an age limit of sixty years). The history of the judiciary in New York, Gerber concludes, represents a slow and imperfect progress toward the ideal of judicial independence, an ideal that would become more fully realized with the institution of an independent federal judiciary in the United States Constitution of 1787.

The collection concludes with five essays that address various issues relating to constitutional design. In "Foot Voting, Political Ignorance, and Constitutional Design," Ilya Somin argues that a federal constitutional system that limits the power of the central government has the potential to enhance citizen welfare and democratic accountability. Under a federal system in which people are free to move from one jurisdiction to another, regional and local governments have incentives to enact policies that citizens find attractive. When citizens relocate, they are, in effect, "voting with their feet," and this foot voting, Somin contends, has significant advantages over conventional ballot box voting. Ballot box voters have strong incentives to be "rationally ignorant" about the candidates and policies they vote on, because the chance that any one vote will have a decisive impact on an electoral outcome is vanishingly small. For the same reason, they also have little or no incentive to make good use of the information they do possess. In contrast, "foot voters" choosing a jurisdiction in which to live have much stronger incentives to acquire information and use it rationally: the choices they make will have a decisive impact on their lives and the lives of their families. Indeed, Somin suggests that under a decentralized system, even members of disadvantaged minority groups with little education are able to acquire the information they need to practice effective foot voting. For example, African Americans in the Jim Crow era South were able to learn from relatives about employment opportunities and better living conditions in the North, and the resulting migration benefited both the migrants and those African Americans who were left behind. Since African Americans were an important source of labor for white-owned farms and businesses in the South, the governments of southern states were forced to take steps toward providing better educational opportunities and enhanced protection of civil liberties. Failure to do so only encouraged more outbound migration. Somin concludes that an appreciation of the advantages of foot voting should lead us to design political institutions that limit the power of the central government and encourage competition among regional and local governments.

In "Pluralist Constitutionalism," William A. Galston explores the ways in which a broadly pluralist outlook can help illuminate long-standing issues relating to constitutional design. He bases his discussion on the account of value pluralism offered by Isaiah Berlin, an account that recognizes cultural diversity and a diversity of reasonable conceptions of the good life. On Berlin's view, there is no single highest good, but rather a variety of goods that might be ranked differently by various people in various circumstances. Galston goes on to show how this pluralist framework is consistent with the maintenance of social order within a viable political community. He contends that those who embrace divergent conceptions of the good life can nevertheless agree on certain minimum conditions of public order, including the rule of law, a stable system of property rights, an economic system that provides genuine opportunities for the poor to improve their condition, and a sense of political community that is strong enough to override ethnic and religious differences. These minimum conditions, Galston suggests, contribute to the existence of a civil order within which