Regulating Judges in the United States: Concerns for Public Confidence

Sarah M. R. Cravens, University of Akron School of Law

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Regulation of judges in the United States, both at present and as it has developed over the past two and a half centuries, is notable both for the wide variety of its structures and practices and for the consistency of its major themes and problems. This chapter (solicited for a book collecting international and comparative views of the regulation of judges around the globe) tackles various aspects of just two of the most substantial and important current (and chronic) issues in the area of regulation of the judiciary in the U.S. These are, first, the lack of official external regulation of the conduct and ethics of the justices of the Supreme Court of the United States, various efforts to change that, and some of the persistent regulatory problems unique to that court. And, second, various regulatory issues relating to the speech and money at stake in the election of judges to seats on various state courts and the ramifications for regulating the ethics of subsequent decisionmaking by the judges who ultimately take those seats.

These two main topics raise an array of issues that fit neatly within the regulatory "pyramid" developed by the book's editors. The values at stake in both the federal and state systems in the U.S., generally speaking, form a solid base upon which the regulatory schemes are built and outcomes are reached. Though processes and resources can and do differ as between the federal and the various state systems, both the federal system and the various state systems sit with some consistent stability upon a base of shared values, and both tend to aim at producing the same types of outcomes. The chapter discusses issues in play for independence and accountability when it comes to regulation, but focuses on concern for public confidence as a prominent driver at work behind the major issues discussed below. Whether public confidence is also a successfully achieved outcome of the regulatory structures as a whole is a question the chapter explores in greater depth.