

STATE CONSTITUTIONAL CHRONICLE

Published by the Center for State Constitutional Studies
Rutgers University, Camden
G. Alan Tarr, Director

Volume 12, No. 1
Winter 2010

CENTER TO CO-HOST IACFS MEETING

The Center for State Constitutional Studies, together with the Meyner Center for the Study of State and Local Government at Lafayette College, has been selected to co-host the annual meeting of the International Association of Centers for Federal Studies (IACFS). The Research Committee on Comparative Federalism and Federation of the International Political Science Association will hold a meeting in conjunction with the IACFS meeting. Sessions for the meetings, which are scheduled for September 16-18, will be held both in Philadelphia and on the Camden campus of Rutgers University. The theme for both conferences is “Federalism and the Global Financial Crisis: Impacts and Responses,” focusing on how federal systems have responded to the economic crisis and on the short- and long-term effects of the crisis on the federal balance in those systems. It is expected that the papers presented will subsequently be published as a book. For further details about the meeting and the papers that will be presented at it, visit the conference web site, which will be constructed early in 2010 and will be accessible via the Center for State Constitutional Studies web site.

The IACFS is an association of 25 centers, located in 15 countries and spanning six continents, that engage in research, education, and technical assistance activities relating to federalism. For more information on IACFS, see its web site at: www.iacfs.org. For more information on the Research Committee on Comparative Federalism and Federation, see: www.ipsa.org/site/content/view/142/57/lang,en/.

NEWSLETTER BY E-MAIL?

If you would prefer to receive the Center newsletter by e-mail, please send your e-mail address to: cscs@camden.rutgers.edu. If you know other people who might wish to receive the newsletter electronically, please also forward their e-mail addresses to the Center.

FRITZ TO DELIVER STATE CONSTITUTIONAL LECTURE

On February 1, 2010, Professor Christian Fritz of the University of New Mexico will deliver the 22nd annual State Constitutional Lecture, entitled “Out From Under the Shadow of the Federal Constitution: An Overlooked *American* Constitutionalism.” The lecture will be held at 2:30 PM in Room 204 of the Law School (West Building), 217 N. Fifth St., Camden, New Jersey.

In a 2004 *Rutgers Law Journal* article, Professor Fritz noted that the American concept of constitutionalism--the idea that government is legitimately constrained by a “higher” law of the constitution--“presents both a comforting standard and an historical quandary. The standard envisioned that “the Federal Constitution proves that America’s diversity--its broad geographic, cultural, political, and economic diversities--were united in a single test of legitimate constitutional government both then and today. The quandary is that the American experience with constitution-making ... has no such unity.” In his presentation, Professor Fritz will explore how the historical experience with state constitutions (rather than the Federal Constitution) is far more edifying and relevant to how Americans have wrestled and continue to wrestle with the constitutional legacy of the American Revolution.

Professor Fritz is Professor of Law at the University of New Mexico, where he teaches in the areas of legal history and property law. He holds a law degree from Hastings College of Law and a Ph.D. in history from the University of California at Berkeley. In 2007, he published the magisterial *American Sovereigns: The People and America’s Constitutional Tradition Before the Civil War* (Cambridge University Press), which documents how constitutionalism in America today is the product of choices Americans made among competing understandings about themselves as a collective sovereign.

INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW WORKSHOP ON SUBNATIONAL CONSTITUTIONS

In the wake of the International Association of Constitutional Law’s (IACL) successful workshop on subnational constitutions in Athens, Greece, in June, 2007, the IACL has again scheduled such a workshop at its World Congress in Mexico City on December 7, 2010. Information on the Congress itself can be found at the Congress web site www.juridicas.unam.mx/wccl/. Information about the workshop on subnational constitutions will be posted on that web site and also on the web site of the Center for State Constitutional Studies.

This upcoming workshop on subnational constitutions will build upon the ongoing work of the Center for State Constitutional Studies to develop the field of comparative constitutional law, looking for the first time at subnational, rather than national, constitutions. We at the Center have been working for about 10 years on an ambitious research agenda focused on this area, and have developed working relationships with a wide range of experts around the world who have collaborated to develop and move forward with a literature in this emerging area of comparative constitutional law. This is an area in which we intend to continue and expand our work,

and we invite interested persons to participate with us. For further information, contact Robert Williams (r fw@camden.rutgers.edu).

CONFERENCE ON 19TH CENTURY STATE CONSTITUTIONS

Alan Tarr, Director of the Center, has organized a conference examining the debates in the constitutional conventions in Massachusetts, New York, and Virginia during the 1820s. The conference will meet March 11-14, 2010, in Safety Harbor, Florida. Participants in the conference, which is sponsored by the Liberty Fund, will focus on the convention debates collected in Merrill Peterson's *Democracy, Liberty and Property: The State Constitutional Conventions of the 1820s*. The Liberty Fund will reissue the book in Fall, 2010, with a new introduction by Alan Tarr.

U.S. VIRGIN ISLANDS FAILS AGAIN TO ADOPT CONSTITUTION

The United States Virgin Islands, a territory of the United States since it was obtained from Denmark almost a hundred years ago, is under the jurisdiction of Congress (U.S. Constitution, Art. IV, § 3). A number of times in the past Congress has authorized the U. S. Virgin Islands, as it has Puerto Rico and Guam, to adopt its own constitution. Such subnational, territorial constitutions have to be approved by Congress.

In 1976, the United States Congress enacted legislation authorizing the Virgin Islands and Guam to draft their own constitutions "within the existing territorial-Federal relationship..." Several earlier, unsuccessful, constitutional conventions had been held prior to this specific authorization. There was a legally-sanctioned constitutional convention in 1977-1978, but the voters rejected the draft constitution. A similar result took place after the 1980 Constitutional Convention. The most recent constitutional convention took place between October, 2007, and May 31, 2009. This was an extremely controversial process. The final product did not recognize the supremacy of the United States Constitution, and purported to give special rights to "natives" of the Virgin Islands. There was also a provision calling for another vote on the status of the Virgin Islands. In June, 2009, the Governor of the Virgin Islands issued his decision to "veto" the constitution and not forward it to the President and Congress.

The draft constitution is available at:

www.governordejongh.com/news/docs/Proposed-Constitution.PBF

SUBNATIONAL CONSTITUTIONAL NEWS

CALIFORNIA: Repair California, a group favoring constitutional reform, has submitted ballot language to call the first constitutional convention in California since

1879. One proposed constitutional initiative would authorize the use of the initiative to call a convention, since this is currently not authorized by the California Constitution. The other proposed initiative would call a limited convention to reform four areas of the constitution: the budget process; the election and initiative process; restoring the balance of power between the state and local governments; and, creating new systems to improve government effectiveness. The convention would be specifically prohibited from proposing tax increases or from considering changes to social issues such as marriage, abortion, gambling, affirmative action, freedom of the press, freedom of religion, immigration, or the death penalty. Should Repair California be able to collect the requisite number of signatures to place the two initiatives on the ballot, voters will decide on calling the convention on the November 2010 ballot, the Convention would be held in 2011, and its proposed reforms would be submitted to the voters in 2012. For further information on these initiatives, see: www.repaircalifornia.org.

SOUTH CAROLINA: In June, 2009, South Carolina Governor Mark Sanford disappeared for a five-day rendezvous with his Argentine lover and confessed a yearlong affair. Since then, his travel and campaign spending have been under scrutiny, particularly his use of state planes for personal and political purposes. State legislators contemplated impeachment of the governor but concluded that the governor's actions did not necessarily involve "serious crimes or serious misconduct in office" as required under the state constitution. Therefore, some legislators have also investigated whether the governor may be removed by address, an alternative procedure authorized by the South Carolina Constitution for "any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment." If the governor can be removed by address, this would require a 2/3 vote of each house of the South Carolina General Assembly.

CENTER SHORTS

In October, 2009, Alan Tarr, Director of the Center for State Constitutional Studies, delivered a presentation on "Learning the Lessons of Reform" at a conference on "Getting to Reform: Avenues to Constitutional Change in California," sponsored by the Institute of Governmental Studies at the University of California, the Bill Lane Center for the American West at Stanford University, and the Center for California Studies at California State University-Sacramento. Copies of his talk and those of other participants can be found on the conference web site at: <http://igs.berkeley.edu/events/reform2010.html>.

In October, 2009, Alan Tarr delivered a talk on "Race and Federalism" at a panel on "Governing Inequality: Race and the Challenge of American Federalism," at the Center for Race and Ethnicity at Rutgers University-New Brunswick.

In October, 2009, Robert Williams, Associate Director of the Center for State Constitutional Studies, gave the keynote address at a conference at Monmouth University on Lieutenant Governors, preceding the televised debate among the candidates for New Jersey Lieutenant Governor. His talk dealt with legal issues surrounding Lieutenant Governors and the long debate leading to the establishment of the office here in New Jersey.

In November, 2009, Robert Williams gave a lecture at the New Jersey Historical

Commission's annual conference entitled "The Right of the People Shall Not Be Violated': The Evolution of Constitutional Rights in New Jersey." This lecture will be revised and expanded and published in *New Jersey History*.

RECENT & FORTHCOMING PUBLICATIONS OF INTEREST

- Allan, John R., Thomas J. Courchene, Christian Leuprecht, Nadia Verrelli, eds. 2010. *Essays in Honour of Ronald L. Watts*. Volume I: *On Federalism*. Volume II: *On Federation*. Kingston: Institute of Intergovernmental Relations. McGill-Queen's University Press.
- Bednar, Jenna. *The Robust Federation: Principles of Design*. New York: Cambridge University Press, 2009.
- Dippel, Horst. *Constitutions of the World*. 7 vols. Available at: www.modern-constitutions.edu/.
- Miller, Lisa L. *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*. New York: Oxford University Press, 2008.
- Nugent, John D. *Safeguarding Federalism: How States Protect Their Interests in National Policymaking*. Norman: University of Oklahoma Press, 2009.
- Rossum, Ralph A., and G. Alan Tarr. *American Constitutional Law*, 8th ed. Boulder, CO: Westview Press, 2010.
- Tarr, G. Alan. "Do Retention Elections Work?" *Missouri Law Review* 74 (2009): 605-633.
- Tarr, G. Alan. "Federalismo e Espaço Constitucional Subnacional," *Revista Brasileira de Estudos Constitucionais* 10 (2009).
- Tarr, G. Alan. *Judicial Process and Judicial Policymaking*, 5th ed. Boston: Wadsworth, 2010.
- Tarr, G. Alan. "New Directions in State Court Research," *Justice System Journal* 30 (forthcoming 2010).
- Williams, Robert F. *The Law of American State Constitutions*. New York: Oxford University Press, 2009.

KEEPING INFORMED & INFORMING OTHERS

The Center welcomes information about constitutional developments within your state or subnational unit and publications relating to subnational constitutions or federalism. The Center is eager to publish such information, space permitting, so as to make it available to a broader audience. Send such information also to: cscs@camden.rutgers.edu.

SUPPORT FOR THE CENTER FOR STATE CONSTITUTIONAL STUDIES

The Rutgers Center for State Constitutional Studies is seeking funding to support its service, research and education programs, as well as Center operations. Although the Center gratefully acknowledges the generous support it has received from Rutgers University, from private foundations, and from agencies of state government, this funding does not fully meet the costs of maintaining and expanding the Center's activities.

Through the Rutgers University Foundation, the Center is seeking contributions from the community as well as from corporations and foundations. Individuals may give gifts in the form of stock, bequests, and in-kind donations, in addition to traditional monetary contributions. Development Officers at the Rutgers University Foundation are available to discuss different types of contributions and associated tax benefits.

If you are interested in making a contribution to the Center for State Constitutional Studies, please contact the Development office at 856-225-6324 for more information.

CONTACTING THE CENTER

Director: G. Alan Tarr
Associate Director: Robert F. Williams
Administrative Assistant: Sylvia S. Somers

Phone: 856-225-6625
Fax: 856-225-6628
E-mail: cscs@camden.rutgers.edu
Web Site: www-camlaw.rutgers.edu/statecon/