
SUBNATIONAL CONSTITUTIONAL CHRONICLE



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THE GLOBAL ECONOMIC CRISIS AND FEDERALISM

In September, 2010, the Center for State Constitutional Studies co-hosted a joint meeting of the International Association of Centers for Federal Studies and the Research Committee on Comparative Federalism and Federation of the International Political Science Association. The theme of the conference was the global economic crisis and federalism — how the crisis has affected federations and how federalism has affected how federal countries have responded to the crisis. Articles based on updated versions of several of the papers presented at the conference, together with a new introductory essay that highlights commonalities and differences among the federations, have been published in the electronic journal *L'Europe en Formation*. Alan Tarr, Director of the Center for State Constitutional Studies, served as

a guest co-editor of the special issue, along with John Kincaid and Sonja Walti, and also contributed an article on “The Global Financial Crisis: A View from the States.” Other articles include studies of the United States, the European Union, Australia, Italy, Germany, Spain, and South Africa. The web site for the special issue of the journal is: http://www.cife.eu/indexUK.php?id_rub=1170318030&id_parent_rub=1170318030&id_top=1169138322&lev=2

In 2012, Oxford University Press will publish *Federations and the Global Financial Crisis: Responses and Effects*, co-edited by John Kincaid, Alan Tarr, and Sonja Walti, which will include updated versions of papers presented at the conference.

NEWSLETTER BY E-MAIL?

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OXFORD UNIVERSITY PRESS PUBLISHES SERIES ON STATE CONSTITUTIONS

In April, 2011, Oxford University Press (OUP) published the 46 volumes in its series “Oxford Commentaries on the State Constitutions of the United States.” Each volume includes a constitutional history of the state, a provision-by-provision commentary on the state’s current constitution, and a comprehensive bibliography. The OUP series includes all the volumes originally published by Greenwood Press before Oxford University Press acquired the rights to the series in 2010. It also includes new volumes on the Illinois Constitution (written by Ann Lousin) and

on the Massachusetts Constitution (written by Lawrence Friedman and Lynnea Thody). For further information on the new series, see: <http://www.oup.com/us/catalog/general/series/OxfordCommentariesontheStateCons/?view=usa>.

In 2012, Oxford University Press plans to publish the initial editions of volumes on the Missouri, Oregon, Pennsylvania, and South Dakota constitutions, plus second editions of several of the original volumes in the series.

Web site: www-camlaw.rutgers.edu/statecon/

CENTER SHORTS

In February, 2011, Alan Tarr, Director of the Center for State Constitutional Studies, testified before the House Judiciary Committee of the Kansas Legislature on a bill that would switch from commission-based selection of court of appeals judges to a system of gubernatorial appointment and Senate confirmation.

In February, 2011, Robert Williams, Associate Director of the Center for State Constitutional Studies, participated on a Continuing Legal Education panel discussion at Seton Hall Law School dealing with “Judicial Autonomy: How Has Governor Christie Affected the Independence of New Jersey's Judiciary?” The program addressed the Governor’s decision not to reappoint a New Jersey Supreme Court Justice after his 7-year probationary appointment, the Senate’s decision not to hold hearings on the Governor’s new nominee, the Chief Justice’s decision to elevate an appellate judge to fill the resulting vacancy, and the decision of a sitting Justice to abstain from participation in cases because he concluded that the Chief Justice did not have the power to elevate the appellate judge to fill the vacancy.

In February, 2011, Robert Williams spoke, with former New Jersey Supreme Court Chief Justice T. Deborah Poritz, at a Continuing Legal Education program at Rutgers University School of Law. The topic for the program was “The New Jersey Supreme Court: Point/Counterpoint,” and the discussion addressed the same controversies surrounding the New Jersey Supreme Court that were covered at the earlier Seton Hall conference.

In March, 2011, Alan Tarr served as a panelist at a Symposium on Judicial Independence sponsored by the *Harvard Journal of Law and Public Policy* in Cambridge, Massachusetts.

In March, 2011, Alan Tarr participated in a Liberty Fund conference on Franz Kafka in New Orleans, Louisiana.

In April, 2011, Alan Tarr presented a paper on subnational constitutionalism in Canada and the United States at the University of Québec at Montréal.

STATE CONSTITUTIONAL NEWS

ALABAMA: The state’s new Republican Legislature, with the approval of the new Republican governor, Robert Bentley, established a new constitutional revision commission during its 2011 regular session. Sponsored by Senate President Pro Tem Del Marsh, the 16-member group, which will be appointed by legislative leaders, will undertake a scheduled study of the uniquely long Alabama Constitution and make periodic reports back. Legislatively approved articles will be submitted to voters for their consideration.

The commission is instructed not to consider constitutional provisions relating to taxation or home rule. It will, however, propose changes in other articles and remove language which has been held invalid by federal courts. The commission is now considering articles pertaining to private corporations and banking. In 2012, the commission will take up articles dealing with the distribution of governmental powers, the Legislature, and representation. In 2013, the group will study the Declaration of Rights, the executive branch, and education. In the final year of the current quadrennium, the revision commission will examine articles relating to impeachments, exemptions, and miscellaneous subjects. (William Stewart, University of Alabama)

MISSISSIPPI: Two proposed constitutional amendments, and perhaps three, will appear on the general election ballot this fall in Mississippi. All are products of an indirect initiative process that has only rarely been used in the past. Under procedure, the state legislature has had an

opportunity to hold public hearings and propose alternatives to the original petitions.

The first initiative (#26) would redefine “person,” in the Mississippi Constitution to include every human being from the moment of fertilization, cloning, or the functional equivalent. The second initiative (#27) would require a voter to secure a government issued identification card (at no charge if the voter did not already have such an ID) and submit it to poll workers prior to voting. The measure would create exemptions for two categories of persons: religious objectors and certain residents of state-licensed care facilities.

The third petition (#31) dealing with eminent domain may or may not appear on the ballot pending the outcome of a court challenge filed on June 3. Under state law, no initiative may be used to alter the meaning of a provision in the bill of rights (Article III of the Mississippi Constitution). The lawsuit argues that petition #31 violates the takings clause of section 17 of Article III. If approved by the court for placement on the election ballot, the measure would prohibit state and local governments from conveying property acquired through eminent domain to private businesses or persons for 10 years after the property was acquired. The initiative would carve out exceptions such as drainage and levee facilities, roads, bridges, ports, common carriers, and utilities. The prohibition would also not apply to certain situations, such as abandoned property or structures unfit for human habitation. (John Winkle, University of Mississippi)

STATE CONSTITUTIONAL ISSUE

The 2011 State Constitutional Issue of the Rutgers Law Journal will be published shortly. The issue contains a comprehensive survey of state constitutional rulings and other constitutional developments during the preceding year. It also includes the following articles:

Christian G. Fritz, "Foreword: Out From Under the Shadow of the Federal Constitution: An Overlooked American Constitutionalism"

Patrick O. Gudridge, "Is There a There There? On What Terms Does State Constitutional Law Exist? For Example, In Florida? Robert F. Williams, *The Law of American State Constitutions* (Oxford University Press: 2009)"

Antonio M. Hernandez, "Judicial Federalism and the Protection of Fundamental Rights in Argentina"

Vladimir Kogan, "The Irony of Comprehensive State Constitutional Reform"

RECENT AND FORTHCOMING PUBLICATIONS

Bauries, Scott R., "State Constitutional Design and Education Reform: Process Specification in Louisiana," *Journal of Law & Education* 40 (January 2011): 1-56.

Gardner, James A., and Jim Rossi, eds. *New Frontiers of State Constitutional Law: Dual Enforcement of Rights*. New York: Oxford University Press, 2011.

Gerber, Scott Douglas. *A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606-1787*. New York: Oxford University Press, 2011.

Geyh, Charles Gardner, "Can the Rule of Law Survive Judicial Politics?" *Cornell Law Review* (forthcoming 2012).

Leonard, Elizabeth Weeks, "State Constitutionalism and the Right to Health Care," *University of Pennsylvania Journal of Constitutional Law* 12 (June 2010): 1325-1406.

Matusaka, John G., and Richard L. Hasen, "Aggressive Enforcement of the Single Subject Rule," *Election Law Journal* 9 (December 2010): 399-419.

Shugerman, Jed H. *The People's Courts: The Rise of Judicial Elections and Judicial Power in America*. Cambridge: Harvard University Press, forthcoming 2011.

Tarr, G. Alan, "Commission-Based Judicial Appointment: The American Experience," *Revue Generale de Droit* 41 (2011): 5-35.

_____. "Explaining Subnational Constitutional Space," *Penn State Law Review* 115 (forthcoming 2011).

_____. "State Constitutional Design and State Constitutional Interpretation," *Montana Law Review* (Winter 2011): 7-26.

_____. *Without Fear or Favor: Judicial Independence and Judicial Accountability in the American States*. Stanford: Stanford University Press, forthcoming 2012.

Williams, Robert F., "Teaching and Researching Comparative Subnational Constitutional Law," *Penn State Law Review* 115 (forthcoming 2011).

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.

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.

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