
SUBNATIONAL CONSTITUTIONAL CHRONICLE



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



Volume 14, No. 1

Winter, 2012

CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS

Early in 2012, McGill-Queen's University Press will publish *Constitutional Dynamics in Federal Systems*, coedited by Michael Burgess and Alan Tarr. This book developed out of a conference cosponsored by the Centre for Federal Studies at the University of Kent and the Center for State Constitutional Studies. The volume highlights the influence of subnational constitutions on constitutional development in federal systems, quasi-federal systems, and the European Union. Contributions include:

Introduction: Sub-national Constitutionalism and Constitutional Development

Michael Burgess and Alan Tarr

State Constitutions and American Political Development

John J. Dinan

Legislative Competences, Budgetary Constraints, and Federalism Reform in Germany from Top Down and Bottom Up

Arthur Gunlicks

Subnational Constitutions and the Federal Constitution in Austria

Peter Bussjäger

Bosnia-Herzegovina: Trying to Build a Federal State on Paradoxes

Jens Woelk

New Constitutions for All Swiss Cantons: A Contemporary Challenge

Nicolas Schmitt

Constitutional and Institutional Autonomy of Communities and Regions in Federal Belgium

Patrick Peeters

Canada: Federal and Subnational Constitutional Practices

Gerald Baier

Quiet Devolution: Sub-state Autonomy and the Gradual Reconstitution of the United Kingdom

Stephen Tierney

Spain's Constitution and Statutes of Autonomy: Explaining the Evolution of Political Decentralization

Carlos Viver

Italy: A Federal Country without Federalism?

Francesco Palermo

Member State Constitutions in the European Union

Anneli Albi

Sub-national Units, Member States and the European Union

Ornella Porchia

MYANMAR AND FEDERALISM

In July, 2011, Alan Tarr, Director of the Center, gave a series of lectures on federalism in Myanmar and participated in meetings on the topic, at the invitation of the State Department. While there, he met with political figures, NGO representatives, journalists, academics, and students to discuss future political directions for the country. The leading opposition party, the National League for Democracy headed by

Nobel Peace Prize Winner Aung San Suu Kyi, has come out in favor of federalism for Myanmar; and even the Constitution of 2008, drafted under the supervision of the current military government, on its face authorizes quasi-federal arrangements. The interest in federalism stems from the need to give recognition and a degree of political autonomy to the geographically concentrated minorities in the country.

SYMPOSIUM ON WILLIAMS TREATISE

In 2009, Robert Williams, Associate Director of the Center for State Constitutional Studies, published the leading treatise on state constitutional law, *The Law of American State Constitutions* (Oxford University Press). In 2011, the New England School of Law devoted an entire issue of its law review to a symposium on this volume—45 NEW ENG. L. REV. 797-912. Contributors to this volume included the chief justices of Alabama and Indiana, as well as other justices, judges, and legal scholars:

"Introduction" by Lawrence Friedman

"Book Review and Response: Robert F. Williams's *The Law of American State Constitutions*" by Sue Bell Cobb & Elizabeth H. Bowles

"Criminal Procedure and the Massachusetts Constitution," by Robert J. Cordy

"America's Other Constitutions: Book Review of *The Law of American State Constitutions*" by Scott L. Kafker

"For Trailblazers, When the U.S. Constitution is Not Enough," by Robert S. Peck

"State Constitutional Remedies and Judicial Exit Strategies," by Randall T. Shepard

"Response: Why State Constitutions Matter," by Robert F. Williams

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

STATE CONSTITUTIONAL AMENDMENTS — 2011

Twenty-five proposed constitutional amendments were on the ballot in October and November, 2011, with 21 proposed by state legislatures and 4 by initiative. Texas had the most proposed amendments (10) and the most approved (7), while Mississippi used the indirect initiative to propose 3 amendments. Eighteen amendments were ratified.

Perhaps the most controversial proposal was Mississippi's Initiative 26, which declared that human life begins "from the moment of fertilization." Opponents of the measure sought to have it removed from the ballot, but the Mississippi Supreme Court rejected their argument. The measure attracted support and opposition not only within the state but from beyond its borders — the *New York Times* published an editorial attacking the proposal — and television ads urging both adoption and rejection were aired. Ultimately, Mississippi voters defeated the amendment by 58% - 42%.

Some proposed amendments dealt with national issues. Mississippi voters approved an amendment that, with a few exceptions, prohibited state and local government from taking private property by eminent domain and then conveying it to other persons/businesses for a period of 10 years. This followed the lead of other states that had also restricted the power of eminent domain in the wake of the U.S. Supreme Court's ruling in *Kelo v. City of New London* (2005). Ohio voters ratified an amendment proposed by initiative that prohibited adoption of any state law that would require Ohio residents to participate in a health care system. The supporters

of the measure viewed it as aimed at preventing the operation of the "individual mandate" provision in the recently adopted federal health care law. Finally, Mississippi voters approved an amendment that required voters "to submit government issued photo identification in order to vote," thereby joining 27 other states that have voter identification laws.

Many proposed amendments dealt with fairly narrow matters, often involving state finance. For example, voters in Louisiana approved amendments that would direct proceeds from the tobacco settlement to a scholarship fund for college students and that would direct a portion of non-recurring funds to the state pension fund but rejected a proposal dealing with the interruption of mineral revenue deposits to the Budget Stabilization Fund. Meanwhile, voters in Texas approved amendments that allowed the legislature to grant surviving spouses of totally disabled veterans a tax exemption on their principal residences, that allowed the Texas Water Development Board to issue additional bonds, and that allowed authorization of the issuance of general obligation bonds to finance the longstanding Hinson-Hazelwood College Student Loan Program; but they rejected a proposal to allow counties to issue redevelopment bonds pledged by tax revenues from increased property values in the redevelopment area. It is expected that the number of proposed amendments will increase in 2012 when, with presidential, congressional, and state races, all states will be going to the polls.

NEWSLETTER BY E-MAIL?

If you would prefer to receive this newsletter by e-mail, please send your e-mail address to the Center for State Constitutional Studies at: 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.

CENTER SHORTS

In September, 2011, Alan Tarr, Director of the Center, served as a panelist at a Symposium on Court Funding jointly sponsored by the American Bar Association, the National Center for State Courts, and the University of Kentucky Law School. Articles based on the presentations at the conference will appear in a forthcoming issue of the *Kentucky Law Journal*.

In September, 2011, Robert Williams, Associate Director of the Center, coauthored a paper on "Unfunded Mandates: Directing Subnational Governments" that was delivered at the annual meeting of the International Association of Centers for Federal Studies, held in Speyer, Germany.

In November, 2011, Robert Williams presented a faculty and graduate student seminar on subnational constitutionalism at the Community Law Center, University of Western Cape, South Africa.

In November, 2011, Robert Williams participated in a process of expert advising for Western Cape provincial government officials and provincial legislative staff on the scope of provincial legislative competences.

In November, 2011, Robert Williams served as a commentator on thesis presentations on federalism and devolution by Ph.D. candidates at the University of Western Cape.

STATE SUPREME COURT BLOG

The National Center for State Courts and William & Mary Law School's Institute for Bill of Rights Law have launched a joint project, the *State Supreme Court Initiative* (SSCI), that should be of interest to students of state constitutional law. SSCI's goals are to study and report on the work and decisions of state supreme courts, to encourage journalists and academics to engage in similar study, and to provide a new vehicle for public education about the important work of state supreme courts. To accomplish this, SSCI will launch in Spring 2012 a website designed to replicate for state supreme courts some of the features available through SCOTUSBlog.com.

SSCI's advisory board includes Professor James Gardner of SUNY Buffalo Law School; Blake Hawthorne, Clerk for the Supreme Court of Texas; Dahlia Lithwick of *Slate*; Laura Kiernan, Communications Director of the New Hampshire Supreme Court; David Savage, the US Supreme Court Correspondent for the *Los Angeles Times*; Daniel Schuman of the Sunlight Foundation; Alan Tarr, Director of the Center for State Constitutional Studies; and the Hon. Eric T. Washington, Chief Judge of the DC Court of Appeals and President of the Conference of Chief Justices. For more information, email Rebecca Green at rgreen@wm.edu.

NEW EDITIONS HIGHLIGHT STATE CONSTITUTIONS

When Oxford University Press acquired "Commentaries on the State Constitutions of the United States," it committed itself to publishing new editions of these valuable volumes. Under the direction of series editor Alan Tarr, these volumes are being thoroughly updated to reflect recent constitutional developments. The first of these revised and updated volumes will appear in early 2012:

Peter Galie & Christopher Bopst, *The New York State Constitution*

Wesley W. Horton, *The Connecticut State Constitution*

Robert F. Williams, *The New Jersey State Constitution*

NEW AND FORTHCOMING PUBLICATIONS

Burgess, Michael D., and G. Alan Tarr, eds. *Constitutional Dynamics in Federal Systems*. Montreal: McGill-Queen's University Press, forthcoming 2012.

Kincaid, John, G. Alan Tarr, and Sonja Walti, eds. *Federalism and the Global Financial Crisis: Impacts and Responses*. NY: Oxford University Press, 2012.

Tarr, G. Alan. "Contesting the Judicial Power in the States," *Harvard Journal of Law & Public Policy* (forthcoming 2012).

Tarr, G. Alan. "Explaining Subnational Constitutional Space," *Penn State Law Review* 115 (2011).

Tarr, G. Alan. "No Exit: The Financial Crisis in State Courts," *Kentucky Law Review* (forthcoming 2012).

Tarr, G. Alan. *Without Fear or Favor: Judicial Independence and Judicial Accountability in the States*. Stanford, CA: Stanford University Press, forthcoming 2012.

Topf, Mel A. *A Doubtful and Perilous Experiment: Advisory Opinions, State Constitutions, and Judicial Supremacy*. New York: Oxford University Press, 2011.

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

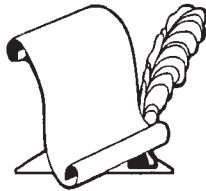
Through the Rutgers University Foundation, the Center is seeking contributions from the community as well as from corpora-

tions 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.



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: <http://camlaw.rutgers.edu/statecon/>

Center for State Constitutional Studies
Rutgers University
411 Cooper Street
Camden, NJ 08102