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Newsletter  
of the  
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of the  
American  
Political  
Science  
Association

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## From the Section Chair

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By the time this issue of the *Law and Courts Newsletter* arrives in your inbox, Merrick Garland will have been waiting for a Senate vote almost 250 days – twice as long as Louis Brandeis’ wait of 125 days which, to this point, had been the longest wait in history.

Scholars and Court watchers are all concerned about what the delay means for the Court, policy, and the law. And, while there is a host of scholarship surrounding this question, it is also important for us, as scholars, to disseminate such data, information, and insights to our students as well as to those outside of the academy. In other words, I believe we should use



this historic showdown to highlight how our academic endeavors are more than simply a group of scholars seeking answers to small esoteric puzzles. Indeed, our work (concerning the confirmation process in particular) provides an excellent example of how we can use our research to teach and inform students within and beyond our classrooms.

Consider (at the risk of boring readers with a literature review) that our subfield has produced a host of top notch research on all aspects of the nomination and confirmation process. While I cannot list all the work done in this area, allow me to highlight several I find especially insightful.

Nemacheck’s book (2008), on how presidents select nominees, provides key insights into how these decisions are born of a host of strategic choices. After presidents make their choice, Johnson and Roberts (2004) and Moraski and Shipan (1999) demonstrate how presidents successfully help their nominees by strategically supporting them through the process.

The confirmation battle culminates in the final Senate vote and our subfield provides many insights into what drives these decisions, from Ruckman’s work on critical nominations (1993), to Segal et al.’s analysis of individual votes (1989), to Kestel et al.’s analysis of how constituent public opinion affects senators’ votes (2010). Finally, Epstein and her colleagues analyze the extent to which president’s nominations are successful by examining the degree to which justices show fidelity to the ideological predilections of their nominating president (2007).

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**General Information**

**Law and Courts** publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** publishes three editions a year (Fall, Summer, and Spring). Deadlines for submission of materials are: February 1 (Spring), June 1 (Summer), and October 1 (Fall). Contributions to **Law and Courts** should be sent to the Editor:

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Instructions to  
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**Articles, Notes, and Commentary**

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts**. Research findings, teaching innovations, release of original data, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review*. Please submit your manuscript electronically in MS Word (.doc) or compatible software and provide a “head shot” photo. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

**Symposia**

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

**Announcements**

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify **BOOKS TO WATCH FOR EDITOR**, *Drew Lanier*, of publication of manuscripts or works that are soon to be completed.

Here I am not as concerned with touting our field's research prowess so much as I am interested in how we can use this line of research (and, frankly, others) for pedagogic purposes. In the classroom, I suspect we do a phenomenal job teaching our graduate and undergraduate students about nomination and confirmation battles and how such clashes fit into the larger judicial context. Bringing this part of the process to our students, and making it come alive for them, is easy. In fact, some of the most interesting stories about the Court emanate from the interaction between Court, Congress, and the president. These stories go well beyond the Thomas and Bork nomination battles. For example, stories from the Nixon administration, or from the cadre of Roosevelt nominees after the Switch in Time, also bring our systematic data to life for students in our classrooms. It is these stories that help us flesh out the systematic research findings I reference above.

More generally, teaching the nomination and confirmation process opens up discussions about a wide range of topics. For instance, it provides great fodder for discussions about the separation of powers, interest group participation in Congress, how committees work in the Senate, and the ability of the presidents to affect the future direction of the Court in light of senatorial oversight.

My point is this. We seem to be very good at analyzing confirmation battles (and the judicial process generally) and we are quite good at using this research to teach our students inside the classroom. However, I am convinced that we can and should do more in terms of outreach with the community beyond our ivory tower. Specifically, Court scholars are in a unique position to disseminate our research findings to the press and public so that we can teach a much broader audience. Consider that we are often "relevant" to the press and the public – especially as, when the Court's term begins and ends, we are often called on to share our research and commentary with those outside of the academy. And again, when the justices hand down major decisions we often entertain press inquiries to explain why a particular decision was reached. In addition, when there is a vacancy on the Court we often find ourselves in the media spotlight. It is during these times that we are really able to teach the public about the Court, the confirmation process, and judicial politics most generally. In the current, prolonged, confirmation battle we should endeavor to teach the public by tying Merrick Garland's situation to our research in an effort to explain how and why the situation has devolved as it has. Using our work to explain other concepts – such as conflicts over the separation of powers or the filibuster – are icing on the cake.

This argument is neither bold nor particularly unique. Indeed, it has become clear in recent years that many of our college and university administrations would like academics – especially in fields like political science – to be relevant by engaging with the community outside the academy. And we have done so to some extent. Recently, I asked members of the

Law and Courts Listserv to report the number of times they have spoken to the press since Justice Scalia's death. While I only had a small response rate (N=35), and while this is admittedly not systematic, during this time span those who responded ultimately spoke to the media an average of four times per respondent.

In other words, to some extent we are doing our part to teach about the Court and the judicial process beyond our peers (through research presentations and publications) and our students in the classroom. But we can do better! I used to think that such outreach through media interviews or public talks was superfluous but now I believe they demonstrate our relevance as a subfield. My argument, however, is not about relevance for the sake of relevance. Rather, it is about making the public aware of how the opaquest branch of our government – the judiciary – functions and ultimately makes law and policy in our nation. If we can do that, then we have done our job well beyond the research we produce. For me that equates with an extra measure of success that I find important for our academic lives.

My views aside, allow me a few words about becoming the chair of our great section. In my transition to section head, I have benefitted enormously from the leadership of the past section head, Kevin T. McGuire. His advice, gentle reminders, and knowledge "of the way things work" have made this transition much smoother than it might have been for me. In addition, I am excited to work with the members of our executive committee, including Rachel Cichowski, Sara Benesh, Jeb Barnes, Rebecca Hamlin, Mark Hurwitz, Brandon Bartels, and Bethany Blackstone. We will have a work-filled year as we seek replacements for David Klein who has edited the *The Journal of Law and Courts* since its inception, Todd Collins who has edited the Newsletter for the past several years, and Art Ward, who has run our website for a number of years. If you have nominations for replacements, please let me know ASAP. Finally, note that our portion of the program at next year's meeting is in the capable hands of Patrick Wolhfarth. He looks forward to receiving your proposals by the deadline of January 9.

All the best,

Timothy R. Johnson



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## Philadelphia Stories: Law & Courts and Constitutional Law & Jurisprudence Sections at APSA 2016

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L. Hilbink

### Reflections from Lisa Hilbink, 2016 Law & Courts Division Chair

Serving as division chair is somewhat akin to directing a play (which I did once in a former life): you select the cast (presenters) and block the scenes (panels), and you rely on a capable group of assistants (chairs and discussants) and crew

(APSA and the host facility) to manage most of the details. For APSA, though, there is no dress rehearsal. You just cross your fingers and hope that everybody shows up at the assigned place and time, ready to perform. I was nervous when I got on the plane to Philadelphia, but, as with a theatrical production, it all miraculously fell into place and, as I sat in the audience of most of the division's panels, I was thrilled and inspired by the amazing work that you are all doing.

As those who read my March memo to the list-serv will recall, I attempted to give approximate proportional representation in the Law and Courts program to five categories of proposals: US Federal (38% of all submitted proposals), US States (15%), Socio-legal (13%), Comparative (26%), and International (7%). Where possible, though, I tried to compose panels that brought together people from more than one of those five subfields, to try to break down silos within the section a bit. I also aimed for diverse representation of

scholars in many senses of the word (e.g., gender, race, nationality, geography, academic rank). At the conference, I was pleased to see that all of this made for very rich exchanges, and I appreciated that the longer time between panels in the new APSA programming allowed for discussions to run over the allotted time without immediate pressure to clear out for the next session.

I attempted to attend as many panels as possible. The marathon began with a terrific 8 a.m. panel on Thursday on New Data and New Methods in Law and Courts and ended with a well-attended and energizing panel on Diversification of the Bench (from the U.S. county courts to the international level) at 10 a.m. on Sunday. In between, there were first-rate panels on such varied themes as political polarization and the courts; law in "lawless places;" legal mobilization; public opinion and the courts; judicial selection in the U.S. states; law, courts, and Islam; and, of course, the classic judicial decision making (at different times, places, and levels). Perhaps most exciting was to see the innovative and high-quality work being done by graduate students. Indeed, I returned to Minnesota and immediately made some of my advisees aware of related projects being conducted by their peers and future colleagues from other institutions.



E. Beaumont

*Reflections from Elizabeth Beaumont, 2016 Constitutional Law and Jurisprudence Chair*

Traveling to Philadelphia for the Annual APSA Meeting provided opportunities consider the past, present, and future of constitutional study and a time when the health of constitutionalism in the U.S. and elsewhere can seem questionable. As Chair of APSA's Constitutional Law and Jurisprudence division, I, too, gained deep appreciation for the range of remarkable work underway.

The Constitutional Law and Jurisprudence division is a sibling to Law and Courts, and the two divisions have some overlap yet also remain somewhat distinct. In general, work on constitutional law and jurisprudence continues to include important attention to interpretation and legal, normative, and theoretical investigations of constitutional design, law, and practice, but the field has grown to incorporate a far wider array of concerns and analysis. This breadth of engagement was on full display at the 2016 conference. Several highlights included a special pre-conference short course/workshop on state constitutional conventions; a lively roundtable on Sandy Levinson's Reading The Federalist in the 21<sup>st</sup> Century; and a panel on the First Amendment in a Diverse Age that invited conversation ranging across hate speech, campus speech, and campaign finance. Other excellent panels offered fresh insights on topics such as analyzing the Supreme Court's use of international and foreign law, comparing approaches to free expression in the U.S. and Europe, looking at civic and popular constitutionalism in relation to the New Deal and civil rights, considering whether partisan capture explains the Supreme Court's decision regarding the Voting Rights Act, and much more. It was fun to stop worrying about the planning details and be able to enjoy the intellectual feast and the chance to learn, share ideas, and see old and new friends.

In constructing the Constitutional Law and Jurisprudence section's seven panels, my goals were to showcase some of the important and diverse topics and approaches that are now shaping the field, encourage conversations among scholars with different backgrounds and at different career stages, and try to maximize participation. This led to four panels organized around broad themes important to contemporary constitutional law and jurisprudence -- constitutional development; judicial decision-making; comparative constitutionalism; and interpretations of rights, law, and community -- together with two more tightly focused panels on the First Amendment and the Federalist in the 21<sup>st</sup> century. Behind the scenes, I was very happy to be able to arrange a home for, and "unofficially" co-sponsor, two other excellent panels of interest to our members: a theme panel on Great Transformations in Constitutional Law, and a panel on Same-Sex Marriage and Obergefell. It was a pleasure to attend as many of our division's panels as possible, and I was gratified to hear lots of continued conversation and positive comments about the panels and program.

*Joint Reflections*

Because so much of what goes into planning an APSA conference is opaque, and this past year brought significant changes, we wanted to share some information and reflections that may be helpful for members and for incoming and potential/future division chairs. Creating the program for our two sections is always challenging because there are too many interesting projects on too many different topics for the sessions allotted to us. For 2016, Law and Courts received time for 22 panels, while Constitutional Law and Jurisprudence was allotted just 7 panel sessions. We received the same allocation last year, and these allocations have recently been determined through a formula based on section membership and average attendance. This is one reason (a purely pragmatic one) why it is so important to encourage everyone to attend others' panels. Strong attendance is necessary to maintain or increase the number of sessions. APSA has not

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**GREAT TRANSFORMATIONS:**  
POLITICAL SCIENCE AND THE BIG QUESTIONS OF OUR TIME  
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released any numbers to us, but we hope that we are at least holding steady in our average attendance.

In addition to this basic constraint, APSA made several major changes affecting all sections:

- A new computerized system for organizing sessions (not user-friendly, and does not permit co-sponsorship)
- A new approach to scheduling (allocating a maximum time rather than a set of panels, sessions with varying lengths, no more lunch time)
- A new set of session formats (opportunities for more creativity, but hard to adopt)

Many of these changes were well-intended attempts to respond to frustrations with aspects of the long-standing conference format. As many of you will recall, this involved encouraging members to consider new session formats beyond the conventional options of submitting an individual paper, full panel, roundtable, or author(s) meet critics proposal. These include: Teaching Café, Research Café, Outreach Café, Short Course or Workshop, Mini-conference, or ePoster.

As in past years, we worked closely together to organize the program. Although we appreciated the spirit of innovation behind APSA's change, because we are small divisions it was extremely difficult to find a way to adopt new formats without reducing the opportunities for members to present and discuss work (and some of our members cannot obtain institutional support to attend conference unless they serve such roles). In the end, only a few of our submissions indicated interest in new formats.

One serious regret is APSA's transition to an ePoster format, which supposedly would enable greater use of technology or multi-media. Unfortunately, this change undid the important work our division had been doing – through the work of Sarah Benesh, Julie Novkov, and many others -- to make poster presentations and sessions a more rewarding scholarly endeavor. This was beginning to include assigned discussants, a best poster award, and a nice presentation of the finalists for best posters at the Law and Courts business meeting. These were great improvements, and we wanted to try to incorporate them. Thus, we asked APSA to permit us to host a "Poster Café" in which all presenters from our divisions could meet together in one room to present, have a discussant, engage in group discussion, and so on. We thought we could make this a great interactive experience by offering coffee and light snacks during lunch time, encourage our division members to bring a brown bag lunch or stop by to mingle, etc. Although APSA initially indicated to us that we could do this, they did not follow through. Instead, we wound up with the standard ePoster approach,

which does not permit presenters to meet together in a physical space. This is a serious loss, and we hope that this approach to posters will be reconsidered. We hope that those who used the system gave feedback to APSA.

Finally, we have a few reflections on panel cohesiveness and size that members and incoming section chairs may want to consider. Because our two sections represent a heterogeneous field, organizers receive many individual proposals that sound important and promising (from the short paper abstract), but that aren't really related to other strong proposals. Division chairs thus often find it difficult to create panels with significant cohesiveness, or they aim for cohesiveness but then find there are good individual proposals begging. Some members find the result frustrating. Of course, when scholars working on related projects propose a full panel, these bring welcome cohesiveness, but section chairs can't merely accept full-panel submissions. Thus, it seems we will continue to have a continuum of cohesiveness, and hopefully can appreciate that there are benefits as well as drawbacks to this.

The size of panels is another concern because it can create problems with time for feedback, discussion, and audience exchange. Again, it is hard to find a workable solution. Many section chairs, including us, try to maximize participation so that scholars can have institutional support to attend APSA, and this has pushed panel sizes up over the past few years. Panel sizes are also larger as a result of attempts to insure against late and last-minute cancellations. This year, for example, a fair number of scholars who planned to fulfill particular roles in our sections had to back out, generally for good reasons. We were only able to replace a few of these in time for the APSA Meetings. This is not a matter of complaint or blame, it's only to help explain why, despite real effort, there is lumpiness -- some APSA panels seem too large, while others can wind up with only 2 papers or no discussant despite Division Chairs' efforts.

As we attended panels and events, we attempted to thank participants, especially chairs and discussants, without whose service the show could not have gone on. For those whom we missed seeing or thanking in person, please accept our sincere thanks now. We are proud to be part of such a thriving and dynamic section and it was a pleasure to serve as division chairs this year,

Needless to say, this was a learning experience for both of us! We are very happy to be handing the Division Chairs' baton over to Emily Zackin and Megan Ming Francis, but we truly enjoyed the opportunity to glimpse -- and learn from -- some of the great inquiries you are undertaking, as well as the chance to connect with many of you personally in Philadelphia. We look forward to 2017!



There is a growing “anti-shari’a” movement in the United States that is especially popular in conservative circles. Commenting on terrorist attacks in Nice, France in July 2016, former House Speaker Newt Gingrich suggested that all American Muslims should be tested and that those who believe in shari’a should be deported. In September 2016, Donald Trump similarly proposed a shari’a test for vetting Muslim

immigrants. According to former Republican Presidential Nominee Mitt Romney, the danger posed by shari’a must be mitigated by banning its application in the United States. In fact, 16 US states have taken measures to ban or restrict the application of shari’a law by American courts since 2013. Similar anti-shari’a bans were also proposed or implemented in the United Kingdom and Canada. Those who support such measures often base their claims on the belief that shari’a and democracy are antithetical or irreconcilable. But is that really so? Are there any democracies, especially in the non-Muslim world, that apply shari’a? What have their experiences been in dealing with Islamic law? Has Islamic law undermined their democracy or supplanted their freedoms? Have they been able to balance the accommodation of shari’a with basic human rights and rule of law? What challenges have they encountered in the process, and how did they overcome them?

There are currently 17 non-Muslim majority countries in the world that formally integrate shari’a into their legal systems.<sup>1</sup> “Shari’a” is a contested term. Although classical Islamic law did not distinguish between civil and criminal cases, in the modern world most countries have limited the application of Islamic law to civil or family matters alone. Moreover, all non-Muslim countries that formally integrate shari’a do so exclusively with respect to family law (i.e., marriage, divorce, maintenance, etc.). Likewise, in the Muslim world, the majority of countries that apply shari’a also limit it to family law alone, while only a handful apply Islamic criminal laws. With these nuances in mind, I think it is more accurate to use in this essay the term “Muslim Family Law” (MFL) rather than “shari’a” to avoid any misconceptions or misunderstandings.

Of the 17 MFL-applying non-Muslim majority countries, four (with 2+ million population) are consistently (in the last five years, 2010-15) classified as “free” regimes by Freedom House (FH): Israel, Greece, India, and Ghana. All four countries have long traditions of implementing MFLs within democratic and largely secular legal and political systems. In Israel and Greece, Islamic family laws are administered by Muslim judges in state-run religious courts, while in India and Ghana

they are applied by civil judges in secular courts. Their experiences, especially those of Israel and Greece can be highly instructive, as they can furnish us with empirical evidence and insights to move beyond ideological debates surrounding “shari’a” and engage in an informed scholarly conversation about the alleged (in)compatibility of shari’a and democracy.

### Muslim Family Law in Israel and Greece

Both Israel and Greece have sizeable Muslim minorities (18% in Israel, 5% in Greece) and formally integrate MFL into their legal systems—Israel since 1948, and Greece since 1881.

MFL in Israel is administered by shari’a courts. *Qadis* (Islamic judges), who serve on these courts, are appointed and salaried by the Israeli government. Shari’a courts have exclusive jurisdiction over marriage and divorce and concurrent jurisdiction with civil family courts over all other matters of personal status (e.g., custody, maintenance) involving Muslim citizens. The main source of MFL in Israel is the Ottoman Law of Family Rights (OLFR) from 1917. Apart from the OLFR, shari’a courts are also required by law to take into consideration civil legislation that place certain penal sanctions and limitations on their interpretation of substantive MFLs (concerning age of marriage, polygamy, unilateral divorce etc.). The Israeli High Court of Justice can hear petitions regarding the competence and jurisdiction of shari’a courts, and overturn their decisions if religious courts overstep their jurisdiction or misinterpret relevant statutory laws.

In Greece, MFL is administered by three *muftis*<sup>2</sup> in the Thrace region. *Muftis* are appointed and salaried by the Greek government and are accorded adjudicative functions. Greek *muftis* rule according to local customs and Hanafi *fiqh*, as Muslim family law in Greece has never been codified.

*Mufti* decisions cannot be implemented without an accompanying enforceability decree issued by the competent local court of first instance (CoFI). In order to declare a *mufti* decision “enforceable” within the domestic system, the CoFI has to review its constitutionality, and determine whether the mufti has acted within the confines of his jurisdiction. Although the *mufti* jurisdiction has long been deemed exclusive over Thracian Muslims, in the last two decades this view has been challenged as local courts in Thrace have begun treating it concurrent with that of civil courts—meaning that Muslims may choose between a civil court and a *mufti* with respect to family matters.

State-enforced religious family laws—especially when individuals do not consent to their application—tend to affect human rights negatively by imposing various limitations upon

four groups of rights in particular: freedom of religion, equality before the law, marital and familial rights, and procedural rights.<sup>3</sup> Despite these known implications of MFLs on human rights, especially those of women, neither government has ever attempted to intervene in substantive Muslim laws through executive or legislative means, since neither government possessed the religious authority to do so. They often limited their interventions to indirect (and often ineffective) penal restrictions that criminalized practices such as underage marriages, polygyny, etc.

In both countries, especially over the last two decades, civil judiciaries have become increasingly involved in the administration of MFL. For instance, in 2001, Israeli civil family courts begun directly applying Islamic law over personal status matters that fall under the concurrent jurisdiction of civil and religious courts. Likewise, in Greece, the Court of Cassation has delivered judgments concerning Islamic inheritance that involved re-interpretation of classical sources of Islamic law, including the Qur'an and hadith. As civil courts have engaged in many MFL litigations over time, they have adopted a more activist stance toward Islamic law, and, even at times, attempted to play the role of "reformer" with respect to Islamic law.

#### **Judicial Activism and Internal Reform in Muslim Family Law**

Civil courts and judges, especially in Muslim majority jurisdictions, can occasionally play an instrumental role in reforming religious law. In Pakistan, for instance, the Supreme Court has expanded women's rights to divorce under Islamic law by engaging in what many call "judicial *ijtihad*." However, this is a much more difficult role for non-Muslim majority-dominated civil courts to play. In Israeli civil family courts there are currently four Arab judges on the bench. In Greece, there is not even a single Muslim judge in the entire legal system, let alone in family courts. The underrepresentation of Muslims in the judicial system in Israel and Greece undermines the legitimacy of the civil judiciary in the eyes of their respective Muslim minorities, thereby preventing civil courts from directly effecting change in Muslim family laws. My research in Israel and Greece shows that the effect of civil courts on evolution of MFL has rather been indirect, through pressure on religious courts/authorities to undertake self-reform.<sup>4</sup>

When Muslim litigants are allowed to choose between religious and civil courts, there is jurisdictional competition between two forums over jurisdiction, clientele, and textual authority. This lateral pressure, exerted by civil courts on their religious counterparts, forces religious authorities to initiate internal reform to increase their appeal to Muslim litigants (especially women) by enabling greater access to courts and increasing their pay-outs through means of substantive or procedural innovations. While lower courts exert lateral pressure on religious courts, higher civil courts (e.g.,

constitutional, supreme courts) exert top-down, vertical pressure by requiring religious courts/judges to comply with their decisions. Religious judges usually do not automatically comply with decisions handed over to them by non-Muslims judges. However, as empirical evidence from Israel and Greece corroborates, religious judges occasionally comply with high court rulings, but this usually takes a subtle form. In cases of subtle compliance, religious courts respond to high court rulings only indirectly (while appearing to defy them) by undertaking the changes demanded by higher courts on their own terms and at their own pace—firmly grounding them in Islamic tradition without any direct reference to secular law. In systems where MFL is more tightly integrated into formal legal system and where the cost of defiance is higher for religious judges, there is a greater chance for subtle compliance.

Chances for internal reform in religious law are greater when higher and lower civil courts work in tandem and exert simultaneous lateral and vertical pressure on religious courts and authorities. For instance, Israeli shari'a courts, which have operated under both lateral pressure from civil family courts and top-down pressure from the HCJ, have undertaken a number of internal reforms in the last two decades that have resulted in modest improvements in the status of women in the shari'a system. While there was a modest internal reform in the Israeli shari'a system, in the Greek *mufti* system there was no change whatsoever. This was due to fact that the Court of Cassation in Greece has not only failed to exert any meaningful top-down pressure on *muftis* but also actively discouraged lower courts from exerting any lateral pressure by challenging *muftis'* jurisdiction.

The difference between the two countries' experiences can be also understood in terms of secular Greek and Israeli judges' different attitudes towards Islamic law and their respective legal cultures. The Greek family law system is almost completely secularized. Greek judges, who are familiar only with secular law, often treat shari'a as a "special" law, not as an integral part of the national system. This view is particularly prevalent among high court judges in Athens, more so than among local judges in Thrace. As a result, they usually fail to hold up *mufti* rulings to constitutional scrutiny. In Israel, by contrast, the family law system for all citizens is almost entirely religion-based. Religious laws and courts are an integral part of the national system. This makes Israeli judges, in comparison to their Greek counterparts, more willing to treat shari'a courts as part of the mainstream judiciary and, therefore, require them to comply with national norms and standards. Likewise, the closer integration of religious courts into the national system in Israel seems to make religious judges more sensitive to requests from the civil judiciary and more receptive to secular ideas.

In the final analysis, the long experiences of Israel and Greece in administering Islamic law within largely democratic and secular frameworks show us that under certain condi-

tions MFL and democracy can co-exist. There are obviously challenges, but it looks like courts can play a constructive role in balancing the accommodation of religious law with human rights and the rule of law. Especially against the backdrop of the so-called shari'a debates in the US and elsewhere, Israeli and Greek experiences demonstrate that if secular democracies integrate religious laws more closely into their legal systems, it may be easier for them to effect changes in these laws through judicial lawmaking and render them compatible with basic rights and the rule of law rather than outright prohibition of their application by the national courts.

### Notes

1 Burma, Cameroon, Eritrea, Ethiopia, Ghana, Greece, India, Israel, Kenya, Mauritius, Philippines, Singapore, Sri Lanka, Suriname, Tanzania, Thailand, Trinidad and Tobago.

2 A mufti is a religious scholar/jurist who is qualified to interpret shari'a and to issue non-binding legal opinions (*fatwas*). Muftis usually do not function as judges (*qadis*). The Greek government, however, has authorized state-appointed and salaried muftis to administer Islamic law by according them adjudicative functions.

3 Sezgin, Yüksel. 2013. *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India*. Cambridge, UK: Cambridge University Press.

4 Sezgin, Yüksel. (forthcoming). *Making "Shari'a" and Democracy Work: The Regulation and Application of Muslim Family Laws in Non-Muslim Democracies*. Cambridge, UK: Cambridge University Press.

## A Symposium: The Politics of State Constitutional Reform

The following articles stem from an APSA short course, "A Political Primer on Periodic State Constitutional Convention Referendum," which occurred at the 2016 Annual Conference.

A special thanks to John Dinan for coordinating these contributions to the newsletter and J.H. Snider for coordinating the APSA short course.

When analyzing the consequences of elections for the development of the U.S. Constitution, scholars concentrate on elections for president and senate, on account of their role in selecting Supreme Court justices who are understood to play a key role in bringing about changes in understandings of federal constitutional provisions. But in the 50 states, voters have a wider range of opportunities to influence the development of constitutions and in a more direct fashion. In three-fourths of the states, supreme court judges are subject to competitive or retention elections. Voters in every state but Delaware can approve or reject legislature-crafted constitutional amendments. One-third of the states permit voters to initiate amendments. One state, Florida, calls for creation of periodic constitutional revision commissions empowered to submit amendments directly to voters for their approval. A quarter of the states require that voters have an opportunity at periodic intervals to vote on whether to call a constitutional convention.

Law and courts scholars who have turned their attention to the state level have generated a number of studies of judicial elections. Legislature-referred and citizen-initiated constitutional amendments have also generated a fair amount of analysis. Yet relatively little attention has been paid to the periodic revision commission and periodic convention referendum, institutions that will be on display in a 2017 New York convention referendum and 2017 Florida revision commission and were examined in a short course at the 2016 APSA conference organized by J.H. Snider. Thanks to Law and Courts newsletter editor Todd Collins for inviting us to share some of the presentations, arguments, and conclusions from the short course.

## Why the Need for “A Political Primer on the Periodic State Constitutional Convention Referendum”

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At the 2016 Annual Meeting of the American Political Science Association, I produced a [short course](#), “A Political Primer on the Periodic State Constitutional Convention Referendum.” The short course consisted of two parts.

Part I included a two-hour compilation of TV documentaries and

political ads. The TV documentaries included excerpts from past constitutional conventions, mostly U.S. state constitutional conventions held during the latter half of the 20<sup>th</sup> Century, plus a smattering of recent path-breaking constitutional conventions held in other countries. The unedited TV ads, mostly 30 seconds in length, were either for or against calling a state constitutional convention at an upcoming referendum. The TV documentaries generally described the past constitutional conventions in hagiographic terms. Most of the professionally produced TV ads were negative and characterized a future constitutional convention as a grave threat to the people’s rights.

Part II consisted of four panels of experts, each panel approximately 30 minutes long. The first panel focused on New York, which on November 7, 2017 has the next referendum on whether to call a state constitutional convention. The panel included a history of New York’s eleven state constitutional conventions since 1777 (J.H. Snider) and an argument why New York’s upcoming referendum was of national interest (Sandy Levinson). The second panel reviewed the history of U.S. state constitutional conventions (John Dinan) and changing public opinion towards them (William Blake). The third panel examined the merits of alternative legislative bypass mechanisms, including Ireland’s 2012 constitutional convention with randomly selected members (David Farrell), Florida’s periodic constitutional revision commission (Carol Weissert), and the constitutional initiative (Craig Holman and John Dinan). The fourth panel focused on the politics and policy of New York’s upcoming constitutional convention referendum, including an identification of the political actors (J.H. Snider) and arguments generally for (Richard Briffault) and against (Craig Holman).

The short course, which was recorded and [posted online](#) at the [State Constitutional Constitution Clearinghouse](#) and [The New York Constitutional Convention Clearinghouse](#),

is intended as a resource for local opinion leaders in states with upcoming state constitutional convention referendums. Between 2016 and 2034 at least one U.S. state every two years will have a referendum on whether to call a state constitutional convention: New York (2017), Hawaii (2018), Iowa (2020), Alaska (2022), Missouri (2022), New Hampshire (2022), Rhode Island (2024), Michigan (2026), Connecticut (2028), Hawaii (2028), Illinois (2028), Iowa (2030), Maryland (2030), Montana (2030), Alaska (2032), New Hampshire (2032), Ohio (2032), and Rhode Island (2034).

No periodic state constitutional convention referendum has passed since 1984—contributing to the longest draught in convening a state constitutional convention in U.S. history. After reviewing many debates leading to those defeats, I concluded that the debate discourse was often ill-informed, partly because of a lack of local experts on whom the press could rely for historical and comparative information about state constitutional conventions.

To rectify this problem, I have sought to provide easily accessible background information in a variety of different formats, including newspaper op-eds, an online information clearinghouse, scholarly articles, public history events, and this short course. My information [clearinghouse](#) on Rhode Island’s November 4, 2014 state constitutional convention referendum, the most recent such referendum, is the most comprehensive online documentation of the politics of such a referendum ever compiled online. The results of my research will be published next year.<sup>1</sup>

Since only a tiny fraction of Americans has lived through a state constitutional convention in their adult lifetimes, and since Americans are not taught about state constitutional conventions (as opposed to the federal constitutional convention of 1787) during their formal schooling (even those such as myself who received a Ph.D. in American government), Americans approach these referendums starting with a huge knowledge deficit, making local opinion leaders that much more influential in public debates.

Too often local opinion elites and the public don’t focus on the referendum until only weeks or days before the referendum, when the debate is dominated by lowest common denominator soundbites, including poorly informed opinion elites distracted by higher profile candidate races.

Such a lack of attention and expertise should not be con-

fused with lack of importance. As every school child learns, the preamble to the U.S. Declaration of Independence states that the American people have an “unalienable” right “to alter” their government. Thirty-seven of fifty U.S. States would eventually include similar rights language in their state constitutions; and all fifty state constitutions would include some type of mechanism to implement that right. Clearly, the right to alter one’s constitution is one of the most fundamental, perhaps even the most fundamental, political rights Americans have. Implicit in that right is the right of the people to peaceably alter their constitution in the face of legislative opposition.

Fourteen states implement that right in part by granting the people the right at periodic intervals (ranging from ten to twenty years) to call a state constitutional convention via a statewide referendum. This institution, like the constitutional initiative, dramatically reduces the legislature’s gatekeeping power over constitutional amendment. Since legislatures have an institutional conflict of interest in proposing reforms that might weaken their own power, this institution serves a vital democratic function--albeit one that is rarely politically salient to the average voter.

Motivating voters to care about the direct provision of collective goods, such as education, transportation, or the environment, has proven hard. Harder still has been motivating them to care about indirect collective goods such as redistricting, campaign finance or other good government reforms that serve as the platform for providing direct collective goods. Hardest of all may be motivating them to care about infrequent and unfamiliar mechanisms for creating

good government—arguably, the ultimate collective action problem.

The price of serving as a check on legislatures is that legislatures are this institution’s intrinsic enemy. Powerful special interest groups with a track record of successfully influencing the legislature are also intrinsic enemies, as their ability to control a constitutional convention is a wildcard. Partly as a consequence of this intrinsic opposition and the collective goods nature of this institution for average voters, campaigns that oppose calling a state constitutional convention have tended to be much more sophisticated and better funded than campaigns that support them.

A state constitutional convention referendum has the ingredients of a collective action problem: concentrated benefits for opposing one and diffuse benefits for favoring one. Better educating the public about this institution via local opinion elites cannot eliminate this classic political problem, but it can mitigate it. The contributors to this law-courts newsletter all recognize the importance of better educating the public about the strengths and weaknesses of this and related legislative bypass institutions.

#### Notes

1 Snider, J.H., “Does the World Really Belong to the Living? The Decline of the Constitutional Convention in New York and Other U.S. States 1776-2015,” *The Journal of American Political Thought*, forthcoming.

### The Most Important Election of 2017

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First things first: I have long advocated a new constitutional convention to assess the adequacy of our 18<sup>th</sup> century Constitution, which is, with regard to its structural provisions, little amended, for our 21<sup>st</sup> century realities. I am not unaware that those of my friends and family who consider the idea basically crazy are complemented by others who simply believe it utterly quixotic even if, in theory, a good idea. I have many responses to the first group; it is harder to deny the argument of the second, for it is difficult actually to imagine a new national constitutional convention in my lifetime—I am now 75.

It is not the case, as was true, say, a decade ago that no prominent politicians were willing to put forward the idea of a new convention. Texas Governor Greg Abbott, for exam-

ple, in January 2016 put forth what he called “the Texas Plan” that consisted of nine amendments to the Constitution, and he argued that the best way to get them was through the mechanism of an “Article V Convention.” That Article provides a two-way path for amending the national Constitution. The one all of us know about, for the simple reason that it is the only one actually used since the establishment of the present governmental system of the United States in 1789, is proposal by two-thirds of both the House of Representatives and the Senate and then ratification by three-quarter of the states. Save for the 21<sup>st</sup> Amendment repealing Prohibition, all ratifications have been the product of decisions of the state legislatures.

But Article V also provides that a new convention “shall” be called by Congress—Congress has no discretion on this matter—should two-thirds of the states petition Congress to do so. And any such Convention would be entitled to

“propose” new amendments for state ratification, and one might well imagine that such proposals would be sent to state conventions, as with the 21<sup>st</sup> Amendment, instead of to state legislatures that might be predicted to be wary of proposed constitutional changes. Indeed, political conservatives have attempted to get such petitions passed by the requisite number of thirty-four state legislatures in order to propose a balanced budget amendment to the Constitution, though, as of October 2016, they have not succeeded. Indeed, the very fact that this proposal for an Article V convention is associated almost entirely with adamantly anti-nationalist conservatives has served to discredit the more general idea of a new constitutional convention among most liberals and moderates. And, ironically or not, some political conservatives, such as the late Phyllis Schlafly, vigorously oppose the idea because of a fear that any such convention would be dominated by liberals who would attack conservative shibboleths; needless to say, one finds much “mirror imaging” on the part of political liberals terrified of political conservatives who are viewed as likely to dominate a convention. Thus, even those who may well agree that the U.S. Constitution deserves amendment—and even that a convention is the only feasible route given the reluctance of Congress to suggest significant changes in a structural status quo under which they have prospered—are so terrified by the actual prospect of a convention that they all adopt a version of the adage “better the devil you know than the devil you don’t.”

So this is why the most important political event of 2017 may well occur in New York State next November. That state’s constitution, like those of thirteen other American state constitutions, require that the electorate be given the opportunity at stated intervals to vote on whether or not to hold a new state constitutional convention. (Oklahoma, one of the fourteen, seems to be in wilful violation of its constitution, but the other states are in compliance.) This is no small aspect of these state constitutions. New Hampshire, for example, has had seventeen state constitutional conventions since 1784!

The New York constitution provides for twenty-year intervals. (The shortest interval, nine years, is Hawaii’s, though New Hampshire had voted at seven-year intervals until a convention in 1964 recommended changing it to ten years and, just as importantly, provided that amendments could be proposed by the state legislature as well as by conventions). The next such decision by the New York electorate is scheduled for 2017. The last such vote, in 1997, had the support, among others, of then Governor Mario Cuomo. This, in itself, should indicate that, unlike proposals for a national convention, it was not supported only by isolated academics or political cranks. It failed, however, in part because of the adamant opposition of labor unions, who feared that a new convention might suggest changes in the prerogatives of those unions especially with regard to pensions for public employees. Mario’s son Andrew is now governor of New

York and, like his father, apparently supports a new convention. This time around, though, the idea may receive even more public support from pundits and newspapers (assuming they continue to have any influence at all), given the even more widespread view that New York’s state government is dysfunctional. The best evidence is the fact that many recent political “leaders,” from Governor Elliot Spitzer to Speaker of the New York Assembly Sheldon Silver and Republican Senate majority leader Dean Skelos, along with a host of less prominent officials, have been forced from office because of their own misdeeds. A May 2016 New York Times article tellingly titled “The Many Faces of New York’s Political Scandals” began by noting, “In the past decade, more than 30 current or former state officeholders in New York have been convicted of crimes, sanctioned or otherwise accused of wrongdoing.”

One can certainly not be confident that the electorate will in fact take advantage of their opportunity to trigger a new convention; once again, public employee unions appear to be mounting vigorous opposition. But it would not be surprising if general disgust of the New York voters who share the widespread conviction that governmental institutions are mal-functioning led to majority support for a new convention, which would presumably take place, after further elections for delegates, in 2018 or 2019.

I am not myself a New Yorker, but I will be following that election more closely than any of the other elections that will be taking place in the United States next year. The reason is simple: If and only if a major state demonstrates to the rest of the country that it is genuinely possible to have a productive convention will it ever become thinkable to support a similar convention at the national level. Perhaps Justice Louis Brandeis’s most quoted phrase is his reference to states as “little laboratories of experimentation,” from which the rest of the country could learn. One need not be a particular enthusiast of federalism in order to believe that at least on occasion states can play their Brandeisian role.

New York is almost an ideal state to play such a role. It is obviously one of our larger states, with an estimated population of just shy of twenty million people. It is, just as obviously, one of our most diverse states, and New Yorkers are, rightly or wrongly, famous for their contentiousness. If a constitutional convention turned out to be a success in New York State, then, to paraphrase Frank Sinatra, one might envision such a convention “anywhere” in the United States, even at the national level. Concomitantly, if the New York voters repeat their negativity of 1997, reflected, it is necessary to acknowledge, in every state referendum since that year, including such states as Michigan, Ohio, and, indeed, New Hampshire itself, then it would be harder than ever to take seriously those few proponents of a national convention. Given that there were more than 230 state conventions between 1789 and 1985, it is hard to believe that this hesitancy

to call new conventions represents great satisfaction with existing state constitutions; at least as likely, and more ominous, is the possibility that it reflects a breakdown of the public trust necessary in one's fellow citizens in any functioning democracy. Fear that any new convention would be taken over by "crazies" would dominate.

In any event, it should now be clear why the New York electorate's opportunity to call for a new constitutional convention in the Empire State should interest Americans everywhere. Even those who proclaim their desire to stick with "they devil they know," are, like partisans of "the lesser evil," forced to concede that their preferences, even if understandable from one perspective, nevertheless require continued

pacts with the devil and collaboration with evil. There are times, to be sure, when this makes sense, when, to refer to another similar adage, "the best becomes the enemy of the good." I am not myself a utopian who believes that even imperfect, but "good enough" realities ought lightly be challenged. If, however, one believes, as I do, that our political situation at the national level is increasingly parlous and in need of the particular kind of full-blown examination that can be provided by a well-functioning constitutional convention, then one can only hope that New Yorkers will adopt as their own Barack Obama's slogan of 2008—"Yes We Can"—and, as well, reveal their own hopeful audacity by endorsing a convention that, at best, can serve as a model for the nation.

## The Development and Use of the Periodic State Constitutional Convention Referendum

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A referendum to be held in November 2017 in New York on calling a state constitutional convention provides an opportunity to reflect on the development and use of the periodic convention referendum and the recent record of voter support and opposition. This analysis might offer context for scholars and

public officials following the New York referendum campaign. It might also help by summarizing what we know about the factors influencing the success and failure of convention referenda, as a way of continuing to build knowledge in this area.

Although several states in the eighteenth century experimented with various ways of undertaking future review of constitutions (Massachusetts provided for a *one-time* convention referendum held fifteen years after passage of its 1780 constitution), New Hampshire (via a 1792 amendment) is credited with pioneering the periodic convention referendum device. In the nineteenth century, seven other states – Indiana (1816), New York (1846), Michigan (1850), Maryland (1851), Ohio (1851), Iowa (1857), and Virginia (1870) – adopted periodic convention referendum requirements, though Indiana and Virginia later eliminated the device. Eight more states adopted this device in the twentieth century -- Oklahoma (1907), Missouri (1920), Alaska (1956), Hawaii (1959), Connecticut (1965), Illinois (1971), Montana (1972), and Rhode Island (1973) -- bringing to fourteen the current number of states with a periodic convention referendum.

Twenty-five conventions have been called as a result of voter approval of periodic convention referenda (representing

more than one-tenth of the state constitutional conventions held in the U.S.). New Hampshire accounts for half of the conventions called in this fashion. But several other states have called multiple conventions using this device, including New York, Michigan, Ohio, and Missouri.

For many years, voters approved periodic convention referenda on a regular basis. To be sure, these referenda were defeated more often than not. But it was not unusual, even as late as the mid-twentieth century, for voters to approve them. As recently as the 1980s, voters' approval of periodic convention referenda led to conventions in New Hampshire and Rhode Island.

Rhode Island's 1986 convention was the last full-scale constitutional convention held in the U.S., leaving aside an unusual and short-lived 1992 Louisiana convention. Voters have been deemed to have rejected each periodic convention referenda held during the last three decades. There have been some close calls. On two occasions, the votes in favor of calling a convention exceeded the votes against a convention: in Hawaii in 1996 and Maryland in 2010. But in each of these cases, state officials interpreted the relevant constitutional provision as requiring approval by a majority of voters in the entire election. Due to voter roll-off, whereby some voters cast ballots for other offices but did not express a preference on the convention referendum, these two referenda fell short of this requirement.

Periodic convention referenda have come close to passing in several other states as well. A 2002 New Hampshire convention referendum attracted support from 49 percent of voters. A 2004 Rhode Island referendum won the support of 48 percent of voters. The most recent Rhode Island referendum, in 2014, won the support of 45 percent of voters.

In recent years scholars have begun to study this record with the intent of gaining an understanding of the factors influencing the outcome of periodic convention referenda.

Whether through studies of particular campaigns or a series of state votes, J.H. Snider, Sandy Levinson, William Blake, and Gerald Benjamin, among others, have identified reasons why convention periodic referenda face an uphill battle as well as several conditions associated with campaigns that have come close to passage.

Among the leading obstacles to passage of these referenda, which are often defeated handily and sometimes by as much as a two-one margin, are legislators who have long approached conventions with skepticism, if not opposition. Conventions often propose institutional reforms that reduce legislative power relative to other branches. Convention delegates have also recommended passage of policy provisions at odds with the agenda of the party controlling the legislature. On some occasions, convention delegates have gained a platform that launches their political career or elevates their status in a way that rivals legislative leaders.

Convention referenda also draw strong opposition from interest groups. When groups are allied with the dominant party in the legislature (for instance, teachers' unions in Democratic-controlled states or business groups in Republican-dominated states), they often spend heavily to defeat convention referenda for the same reasons that motivate legislators' opposition. They are concerned that convention delegates might raise issues and recommend passage of provisions that have been effectively kept off the policy agenda by their supporters in the legislature.

Groups also work to defeat convention referenda because they fear that gains secured through existing constitutional provisions might be put at risk in a convention. Public-employee unions have campaigned against several recent convention referenda, in part out of a concern that conventions might recommend weakening constitutional protections for collective-bargaining rights. Civil liberties groups have raised concerns that conventions might recommend revising state bill of rights language so as to limit state courts' ability to interpret these provisions in an expansive fashion. At times, gun-rights groups have opposed convention referenda because current state constitutional right-to-bear arms provisions are stronger than the Second Amendment and could be weakened if a convention were to recommend such changes and they were approved by voters.

In the face of these and other source of opposition, periodic convention referenda have had some degree of success, in the sense that they have come close to passage, under certain conditions. In general, the challenge is to attract media and public attention to the convention referendum and to state constitutional reform more broadly, in a way that enables

voters to evaluate over a sustained period various claims about the advantages of holding a convention and the risks and costs of such an undertaking.

Referenda generally fare somewhat better when they are not held at the same time as a presidential election, as Levinson and Blake have shown. Presumably this is because referenda supporters are able in off-year elections to focus more public attention on the convention question as opposed to the presidential contest. Governors also play a key role. A gubernatorial endorsement can offer legitimacy to a convention campaign; but gubernatorial support can be even more important simply by attracting media and public attention to a referendum often overlooked by voters because it is overshadowed by other contests. Still other steps have been taken to attract public attention to convention referenda and thereby help overcome voter indifference and distrust rooted to some degree in a lack of knowledge, whether by convening a commission to study and issue a report in the lead-up to a convention referendum, as is required in Rhode Island and has occasionally been done in other states.

The periodic convention referendum is one of several state-level institutions that influence constitutional development and have no counterpart at the federal level. Some of these institutions, such as judicial elections and citizen-initiated amendments, have attracted a fair amount of scholarly attention. But the upcoming New York vote offers a welcome opportunity to attract even more scholarly attention to the periodic convention referendum and contribute to our growing understanding of the politics surrounding this device.

## Florida Constitution Revision Commission and the Public

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Floridians have five opportunities to amend their constitution. In addition to legislative referral, constitutional convention, and the initiative, they also have opportunities every twenty years to revise their constitution through a Constitution Revision Commission (CRC) and a Tax and Budget Reform Commission (TRBC).<sup>1</sup>

In 2017, a constitution revision commission will be named to recommend changes to the state's constitution. This commission's recommendations go directly to the ballot without review from the supreme court or attorney general. There are 37 members of the commission appointed by the governor (15), speaker of the house (9), president of the senate (9), and chief justice of the supreme court (3). The state's attorney general automatically serves on the commission.

The commission will be named by early March 2017 (before the legislature convenes) and their recommendations will go on the 2018 ballot. There have been two earlier commissions (1977-78 and 1997-98). None of the eight proposals from the first commission passed; seven of the eight from the 1997-98 commission are now part of the constitution. The success of the second commission has been attributed to a more intensive marketing effort to inform citizens of the proposals (Salokar 2005).

The constitutional amendments proposed by the 1997-98 commission and adopted by the electorate were substantively important. They included requiring the state to make adequate provision for an efficient, safe, secure and high quality public education system, a local option for merit selection of trial judges, streamlining the state cabinet to four officials (including the governor), and setting up a system of public financing for statewide candidates.

Clearly the membership of the commission is key. In the first commission, the legislature and the governor were Democrats; in the second, the governor was a Democrat and both houses of the legislature were Republican. In 2017, the governor and the legislature are Republican. In the two earlier commissions, appointees have been from both parties (even in 1977). The question is whether this will continue to be the case in 2017. Traditionally, commission members reflect the geographic, gender and racial/ethnicity makeup of the states.

In an effort to encourage top-notch membership on the commission, eighteen groups in Florida came together in 2015 to form the Partnership for Revising Florida's constitution. The group has pledged to educate, engage and empower citizens in Florida concerning the upcoming CRC. The groups represent a broad spectrum of Florida's interests, from The Florida Bar to the Florida Chamber Foundation; from the NAACP Florida to the League of Women Voters of Florida. The partnership is headed by the LeRoy Collins Institute, a policy institute at Florida State University.<sup>2</sup> Partners were asked to inform their members on the partnership and the upcoming commission using annual meetings, webpages, and social media among other venues. A kick-off event in Tallahassee featured past members of the CRC talking about its importance, opportunities and challenges. The event was filmed by the Florida Channel and made available on the partnership website.

The Florida Bar was a particularly active partner. In its strategic plan for 2016-2019, it included an item for immediate action, "Educate Florida Bar members and the public about the upcoming Constitution Revision Commission process." The Bar funded a publication for the Partnership entitled, "A Citizens' Guide to the Florida Constitution Commission" which was made widely available through print (150,000 copies were printed) and on-line. The Cuban American Bar Association paid for translation and publication of the Citizens' Guide in Spanish. That too was widely distributed. The League of Women Voters of Florida was another active partner, sending out 56,000 copies to their local leagues which also held sessions on the upcoming CRC using partnership materials and highlighting local residents who had served on earlier CRCs. Another 60,000 copies went to public libraries across the state. Op ed pieces on the CRC were placed in newspapers throughout the state.

To reach a younger audience, the Collins Institute produced a three-minute animation that covered the key points in the importance of the CRC and the process it entails. The Florida State University law school and the law school at the University of Florida offered classes on the CRC—highlighting possible amendments that could be added. The FSU class was targeted to both law students and political science graduate students. The Bob Graham Center at the University of Florida is focusing its annual public policy summit for undergraduates across the state on the CRC. The Florida Press Association sent out information on the CRC regularly in their communication with members.

Finally, the partnership uses social media to reach a wider audience. Colorful info graphics were featured in Facebook posts; tweets provide little-known facts about past CRCs and highlight events and news on the CRC.

The partnership was formed about 18 months prior to the first appointment to highlight the importance of commission membership. The governor, senate president and chief justice have provided links for self-appointment or nomination of others on their webpages. The governor's office has been publishing the names of those who have applied for the position in an effort at transparency.

There are no procedures for the commission set in the constitution in law; each commission determines its own rules and procedures. It is tasked with examining the constitution of the state except for matters related to taxation or the state's budgetary powers. The commission is required to hold public hearings.

There is no shortage of ideas that will likely be proposed including revising legislative term limits, changing the state's primary system, establishing a statutory initiative, judicial nominations, felon voting and K-12 education funding. Interest groups have geared up to propose their favored items; the public needs to do so as well.

The second phase of the Partnership for Revising Florida's

Constitution takes place once the commission has been named. The partnership's website will provide links for members and others to publicize their preferred constitutional amendments. The group will continue to encourage media and public participation in the deliberations and highlight opportunities for public engagement.

While constitutional revision may initially sound a bit esoteric, citizens quickly understand the importance of the commission in sponsoring items that the legislature is unlikely to propose and without having to raise the millions of dollars required in successful initiative processes. The partnership will continue to use the web, social media, and YouTube to raise awareness and opportunities for citizens. It is an opportunity too important to miss.

### Notes

- 1 The TBRC last met in 2007-2008.
- 2 Information on the partners and partnership may be found on the Partnership for Revising Florida's Constitution website: <http://revisefl.com/>. Information on the LeRoy Collins Institute is at <http://collinsinstitute.fsu.edu/>

### Reference

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## Books to Watch For – Fall 2016

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**Karen Alter** (Northwestern University) and **Laurence R. Helfer** (Duke University) have co-published *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice* (Oxford University Press, 2017, ISBN 978-0-19968-0-788).

The work "provides a deep, systematic investigation of the most active and successful transplant of the European Court of Justice. The Andean Tribunal is effective by any plausible definition of the term, but only in the domain of intellectual property law. Alter and Helfer explain how the Andean Tribunal established its legal authority within and beyond this intellectual property island, and how Andean judges have navigated moments of both transnational political consensus and political contestation over the goals and objectives of regional economic integration. By letting member states set the pace and scope of Andean integration, by condemning unequivocal violations of Andean rules, and by allowing for the coexistence of national legislation and supranational authority, the Tribunal has retained its fidelity to Andean law while building relationships with nationally-based administrative agencies, lawyers, and judges. Yet the Tribunals' circumpect and formalist approach means that, unlike in Europe,

community law is not an engine of integration. The Tribunals' strategy has also limited its influence within the Andean legal system. The authors also revisit their own path-breaking scholarship on the effectiveness of international adjudication. Alter and Helfer argue that the European Court of Justice benefitted in underappreciated ways from the support of transnational jurist advocacy movements that are absent or poorly organized in the Andes and elsewhere in the world. The Andean Tribunals' longevity despite these and other challenges offers guidance for international courts in other developing country contexts. Moreover, given that the Andean Community has weathered member state withdrawals and threats of exit, major economic and political crises, and the retrenchment of core policies such as the common external tariff, the Andean experience offers timely and important lessons for Europe's international courts."

**Lauren Edelman** (University of California, Berkeley) has written *Working Law: Courts, Corporations and Symbolic Civil Rights* (University of Chicago Press, 2016, ISBN 978-0-22640

-0-761). In this book, Edelman argues that we have become a symbolic civil rights society in which symbols of diversity substitute for equal opportunity at work. Employers prominently display their antidiscrimination and diversity policies, yet race and gender still dramatically shape employees' experiences. Even judges are often convinced that an organization is in compliance by the mere presence of an antidiscrimination policy or grievance procedure, irrespective of whether these policies effectively protect the rights of women and minorities. Judicial deference to symbolic compliance helps to explain why race and gender inequality at work persists more than a half century after the 1964 Civil Rights Act.

**Anna Kirkland** (University of Michigan) has published *Vaccine Court: The Law and Politics of Injury* (New York University Press, 2016, 978-1-47987-6-938). "The so-called vaccine court is a small special court in the United States Court of Federal Claims that handles controversial claims that a vaccine has harmed someone. While vaccines in general are extremely safe and effective, some people still suffer severe vaccine reactions and bring their claims to vaccine court. In this court, lawyers, activists, judges, doctors, and scientists come together, sometimes arguing bitterly, trying to figure out whether a vaccine really caused a person's medical problem. In this work, Kirkland draws on the trials of the vaccine court to explore how legal institutions resolve complex scientific questions. What are vaccine injuries, and how do we come to recognize them? What does it mean to transform these questions into a legal problem and funnel them through a special national vaccine court, as we do in the U.S.? What does justice require for vaccine injury claims, and how can we deliver it? These are highly contested questions, and the terms in which they have been debated over the last forty years are highly revealing of deeper fissures in our society over motherhood, community, health, harm, and trust in authority. While many scholars argue that it's foolish to let judges and lawyers decide medical claims about vaccines, Kirkland argues that our political and legal response to vaccine injury claims shows how well legal institutions can handle specialized scientific matters. *Vaccine Court* is an accessible and thorough account of what the vaccine court is, why we have it, and what it does."

**Jamie Mayerfeld** (University of Washington) has authored *The Promise of Human Rights: Constitutional Government, Democratic Legitimacy, and International Law* (University of Pennsylvania Press, 2016, ISBN 978-0-81224-8-166). "International human rights law is often criticized as an infringement of constitutional democracy. In *The Promise of Human Rights*, Mayerfeld argues to the contrary that international human rights law provides a necessary extension of checks and balances and therefore completes the domestic constitutional order. In today's world, constitutional democracy is best understood as a cooperative project enlisting both domestic and international guardians to strengthen the protection of human rights. Reasons to support this view may be found in the political

philosophy of James Madison, the principal architect of the U.S. Constitution. The book presents sustained theoretical discussions of human rights, constitutionalism, democracy, and sovereignty, along with an extended case study of divergent transatlantic approaches to human rights. Mayerfeld shows that the embrace of international human rights law has inhibited human rights violations in Europe whereas its marginalization has facilitated human rights violations in the United States. A longstanding policy of "American exceptionalism" was a major contributing factor to the Bush administration's use of torture after 9/11. Mounting a combination of theoretical and empirical arguments, Mayerfeld concludes that countries genuinely committed to constitutional democracy should incorporate international human rights law into their domestic legal system and accept international oversight of their human rights practices.

**Keramet Reiter** (University of California, Irvine) has published *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (Yale University Press, 2016, ISBN 978-0-30021-1-467). "Originally meant to be brief and exceptional, solitary confinement in U.S. prisons has become long-term and common. Prisoners spend 23 hours a day in featureless cells, with no visitors or human contact for years on end, and they are held entirely at administrators' discretion. Reiter's *23/7* tells the history of one "supermax," California's Pelican Bay State Prison, whose extreme conditions recently sparked a statewide hunger strike by 30,000 prisoners. This book describes how Pelican Bay was created without legislative oversight, in fearful response to 1970s radicals; how easily prisoners slip into solitary; and the mental havoc and social costs of years and decades in isolation. The product of fifteen years of research in and about prisons, this book provides essential background to a subject now drawing national attention."

**Joshua C. Wilson** (University of Denver) has written *The New States of Abortion Politics* (Stanford University Press, 2016, ISBN 978-0-80479-2-028). "*McCullen v. Coakley* (2014) struck down a Massachusetts law regulating anti-abortion activism and marked the reengagement of the Supreme Court in abortion politics. A throwback to the days of clinic-front protests, that decision seemed a means to reinvigorate the old street politics of abortion. The Court's ruling also highlights the success of a decades' long effort by anti-abortion activists to transform the very politics of abortion. The book tells the story of this movement, from streets to legislative halls to courtrooms. With the end of clinic-front activism, lawyers and politicians took on the fight. Anti-abortion activists moved away from a doomed frontal assault on *Roe v. Wade* and adopted an incremental strategy—putting anti-abortion causes on the offensive in friendly state forums and placing reproductive rights advocates on the defense in the courts. The Supreme Court ruling in *Whole Woman's Health v. Hellerstedt* (2016) makes the stakes for abortion politics higher than ever. This book elucidates how—and why."