

# UPON THE SHORES OF AN UNKNOWN SEA

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*Democratic Beginnings: Founding the Western States*

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Amy Bridges has written an outstanding book on the founding of the western states that should be read by all scholars of state constitutions, American constitutionalism, and American political development. Historians who focus their studies on the West will find her account to be a valuable new resource for understanding the region.

## I. INTRODUCTION

It seems customary now to begin with a defense of state constitutions in any article or book on the subject. A convenient foil is always legal scholar James A. Gardner, who has made some rather harsh assessments of state constitutionalism.<sup>1</sup> Robert F. Williams also questions the efficacy of state constitutions in providing a solid foundation for judicial interpretation and legal discourse, especially regarding individual rights.<sup>2</sup> Gardner, Williams, and others who present similar conclusions

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1. JAMES A. GARDNER, *INTERPRETING STATE CONSTITUTIONS: A JURISPRUDENCE OF FUNCTION IN A FEDERAL SYSTEM* (2005); James A. Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761 (1992).

2. See generally ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* (2009).

are correct that these documents have failed in many ways to offer a clear constitutional authority for state judges determining the merits of a claim.<sup>3</sup> These critics often have one thing in common: they are law professors assessing the contemporary function of state constitutions, often as compared unfavorably to the U.S. Constitution. The problems they identify—excessive borrowing, unwieldy length, and the inclusion of provisions that appear more legislative than constitutional—could certainly hinder a coherent theory of judicial interpretation. Gardner laments that anyone attempting to understand state constitutionalism will confront the following issue:

After reading dozens of state constitutional decisions, you have absolutely no sense of the history of the state constitution. You do not know the identity of the founders, their purposes in creating the constitution, or the specific events that may have shaped their thinking. . . . You are able to form no conception of the character or fundamental values of the people of the state, and no idea how to mount an argument that certain things are more important to the people than others.<sup>4</sup>

He claims these failings represent “the poverty of state constitutional discourse.”<sup>5</sup> Bridges’s *Democratic Beginnings* traces the creation of the eleven western state constitutions—Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming—and in so doing reveals the personalities and purposes of the founders, the events and experiences that shaped their thinking, and the fundamental values of the people they represented.<sup>6</sup> Bridges has enriched the state constitutional discourse, and perhaps her book should be required reading for state judges in the West.

The states provide a long-running, vast, and complex set of resources for scholars examining the process of constitution making and its political consequences. At the state level, there have been almost 250 constitutional conventions and over 6000 amendments since the late eighteenth century, while at the national level there has been just one convention and twenty-seven Amendments—two of which cancel each other. Don Fehrenbacher argues that the great historical importance of state constitutions “is largely obscured by the splendor of the

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3. See Paul W. Kahn, *Interpretation and Authority in State Constitutionalism*, 106 HARV. L. REV. 1147, 1161 (1993).

4. Gardner, *supra* note 1, at 765.

5. *Id.* at 766.

6. AMY BRIDGES, *DEMOCRATIC BEGINNINGS: FOUNDING THE WESTERN STATES* (2015).

achievement at Philadelphia in 1787.”<sup>7</sup> Scholars of the federal document encounter a dearth of resources for considering the deliberations of the Founders. Moreover, the rigid amendment process of the U.S. Constitution channels scholarship to judicial interpretation or construction of textual meaning by political actors.<sup>8</sup> But there are thousands of pages from state convention debates that reveal the struggles between delegates and among coalitions during the process of constitutional creation, so analysis is not limited to whether a judge got it right; the words and arguments of the framers are available for our consideration. These convention notes have not been sufficiently investigated.<sup>9</sup> (Bridges has helped remedy this scholarly oversight by mining thousands of pages of debates, along with newspaper accounts and other primary and secondary sources.) The political conflict surrounding state constitutional creation, revision, and amendment also reveals the important local, state, regional, and national issues at a given time. And the choices of the conventions tracked the shifting boundaries of American federalism because state constitutions could not occupy the same political authority space as the U.S. Constitution.<sup>10</sup>

Political science scholarship on state constitutions is somewhat limited, but it is growing. This is thanks in large part to the work of John Dinan and G. Alan Tarr. In *Understanding State Constitutions*, Tarr begins by describing the “distinctiveness of state constitutionalism” and notes that state constitutions are unlike the federal model of enumerated powers because states must constitutionally limit their governments that hold a large set of reserved powers.<sup>11</sup> Tarr argues that state constitutional politics has been dominated by three recurring issues: (1) “the distribution of political power among groups and regions within the individual states, reflected in conflicts over apportionment and the franchise”; (2) “the scope of governmental authority, particularly what sorts of substantive or procedural limitations should be imposed on state legislatures”; and (3) “the relation of the state to economic activity, including both the extent of direct governmental support for enterprise and the appropriate balance between promotion and

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7. DON E. FEHRENBACHER, SECTIONAL CRISIS AND SOUTHERN CONSTITUTIONALISM 82 (1989).

8. KEITH E. WHITTINGTON, CONSTITUTIONAL CONSTRUCTION: DIVIDED POWERS AND CONSTITUTIONAL MEANING 1–4 (1999).

9. JOHN J. DINAN, THE AMERICAN STATE CONSTITUTIONAL TRADITION 27–28 (2006).

10. Kermit L. Hall, *The Irony of the Federal Constitution's Genius: State Constitutional Development*, in THE CONSTITUTION AND AMERICAN POLITICAL DEVELOPMENT: AN INSTITUTIONAL PERSPECTIVE 235, 237–39 (Peter F. Nardulli ed., 1992); Donald S. Lutz, *The Purposes of American State Constitutions*, PUBLIUS, Winter 1982, at 27, 27.

11. G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 6–7 (1998).

regulation of economic development.”<sup>12</sup> Tarr investigates these recurring issues over the eighteenth, nineteenth, and twentieth centuries, while providing a broad introduction to state constitutions.<sup>13</sup>

Dinan argues that the most important feature of state constitutions, compared to the federal model, is their “relatively flexible procedures for constitutional change.”<sup>14</sup> The U.S. Constitution looks almost static when viewing the massive amount of revision and amendment at the state level. Thus, Dinan claims, “state convention debates are in many ways a better expression of the considered judgment of the American constitutional tradition than can be found in the eighteenth-century federal sources.”<sup>15</sup> Dinan traces the development of procedures for constitutional amendment and revision, including periodic votes on conventions, required periodic conventions (influenced by Thomas Jefferson’s theory of a new constitution for each generation), and various legislative and popular voting/majority provisions. He then considers state constitutionalism as it relates to representation, separation of powers, bicameralism, rights, and citizen character. Dinan claims that our understanding of the shifting view for each constitutional subject is contingent on the flexible process of constitutional change.<sup>16</sup> Tarr also acknowledges the importance of “the frequency of state constitutional change through constitutional amendment and constitutional revision.”<sup>17</sup> Tarr and Dinan have investigated many features of the subject in additional articles and books and, more importantly, they have opened new lines of inquiry for other scholars of law and American political development.<sup>18</sup>

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12. *Id.* at 4–5.

13. *Id.*

14. DINAN, *supra* note 9, at 3.

15. *Id.* at 5.

16. *Id.* at 29–63.

17. TARR, *supra* note 11, at 29.

18. See, e.g., CONSTITUTIONAL POLITICS IN THE STATES: CONTEMPORARY CONTROVERSIES AND HISTORICAL PATTERNS (G. Alan Tarr ed., 1996); John J. Dinan, *State Constitutions and American Political Development*, in CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS 43–59 (Michael Burgess & G. Alan Tarr eds., 2012); JOHN J. DINAN, *THE VIRGINIA STATE CONSTITUTION: A REFERENCE GUIDE* 1–32 (2006); G. ALAN TARR, *WITHOUT FEAR OR FAVOR: JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY IN THE STATES* (2012); John J. Dinan, *Framing a “People’s Government”: State Constitution-Making in the Progressive Era*, 30 RUTGERS L.J. 933 (1999); John J. Dinan, “*The Earth Belongs Always to the Living Generation*”: *The Development of State Constitutional Amendment and Revision Procedures*, 60 REV. POL. 645 (2000); John J. Dinan, *The Meaning of State Constitutional Education Clauses: Evidence from the Constitutional Convention Debates*, 70 ALB. L. REV. 927 (2007); G. Alan Tarr, *State Constitutional Interpretation*, 8 TEX. REV. L. & POL. 357 (2004); G. Alan Tarr, *Constitutional Theory and State Constitutional Interpretation*, 22 RUTGERS L.J. 841 (1991). Both scholars have authored additional work on the subject.

Political theorist Donald Lutz identifies the “purposes of American state constitutions.”<sup>19</sup> He claims that state constitutions should be considered at two levels: first, they must contain traditional constitutional provisions; second, they must be drafted in a manner that is appropriate considering their place in the federal system.<sup>20</sup> Lutz disputes the Beardian notion that constitutions are meant to create governments that can be controlled and manipulated by elites.<sup>21</sup> He also points out that because the U.S. Constitution is an incomplete document, decisions about criminal and civil codes, education, intrastate commerce, and other issues must be dealt with in state constitutions.<sup>22</sup> Moreover, states define their own way of life because the federal document is incomplete in this regard.<sup>23</sup> Lutz rightly places state constitutions within the federal system, while making claims about the basic requirements of all constitutions. Additionally, he recognizes that state constitutions, and the amendment process, “‘freeze’ in documentary form the balance of forces within a political system at a given time.”<sup>24</sup>

Law professor Christian Fritz also deserves mention. His book, *American Sovereigns*, traces the development of ideas of popular sovereignty from the Founding to the Civil War, focusing much of his attention on the states.<sup>25</sup> Gardner highlights the extensive textual borrowing in state constitutions and the problems that result when studying these documents as unique manifestations of the preferences of a polity or as the basis by which to consider the development of American constitutional theory.<sup>26</sup> These criticisms are short-sighted, but it is necessary to consider where certain constitutional ideas originated and where they took hold.<sup>27</sup> Fritz and fellow law professor Marsha Baum have identified a set of sources that show this process of interstate borrowing began early in American history and was rather extensive from the beginning. They highlight the presence of “comprehensive compilations of existing state constitutions” that made their appearance six years

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19. Lutz, *supra* note 10, at 27.

20. *Id.*

21. *Id.* at 27–28 n.2.

22. *Id.* at 38, 40.

23. *Id.*

24. *Id.* at 29.

25. CHRISTIAN G. FRITZ, *AMERICAN SOVEREIGNS: THE PEOPLE AND AMERICA'S CONSTITUTIONAL TRADITION BEFORE THE CIVIL WAR 1–8* (2008).

26. Gardner, *supra* note 1, at 818.

27. See DINAN, *supra* note 9, at 14–15; TARR, *supra* note 11, at 21; WALTER FAIRLEIGH DODD, *THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS* (1910) for evidence of borrowing and its importance to state constitutional development.

before the creation of the U.S. Constitution.<sup>28</sup> Baum and Fritz argue that this discovery reveals that early Americans “took a deeper interest in their written constitutions than previously suspected.”<sup>29</sup> They also dispute the notion that borrowing indicates a lack of imagination on the part of framers—compilations were essential in debates over the structure and design of government. Bridges builds on this and offers additional evidence of purposeful and thoughtful borrowing in state conventions.<sup>30</sup>

More recently, Sandy Levinson published *Framed*, in which he argues there is a “connection between the perceived deficiencies of contemporary government and formal constitutions.”<sup>31</sup> He focuses on constitutional structures and looks to the states for answers. Emily Zackin also acknowledges the importance of the states in American constitutionalism in her book, *Looking for Rights in All the Wrong Places*.<sup>32</sup> She argues that the idea that America does not have a robust tradition of positive rights is wrong.<sup>33</sup> While the U.S. Constitution contains negative rights, state constitutions have a long history of placing obligations on the government for the protection of labor rights, public education, and the environment.<sup>34</sup> These efforts, along with the current work of Sean Beienburg on state constitutional resistance to federal authority and that of Robinson Woodward-Burns on constitutional decentralization, show that political scientists who study law and American politics have focused some much-needed attention on the states.<sup>35</sup> *Democratic Beginnings* is an essential component of this ever-growing literature. Bridges offers a new and fascinating approach to the study of state constitutions and the West through the lens of

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28. Marsha L. Baum & Christian G. Fritz, *American Constitution-Making: The Neglected State Constitutional Sources*, 27 HASTINGS CONST. L.Q. 199, 199 (2000).

29. *Id.* at 200.

30. BRIDGES, *supra* note 6, at 14, 19–20, 142.

31. SANFORD LEVINSON, *FRAMED: AMERICA'S 51 CONSTITUTIONS AND THE CRISIS OF GOVERNANCE* 5 (2012).

32. EMILY J. ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 2–4 (2013); see also William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491, 502 (1977); Helen Hershkoff, *Positive Rights and the Evolution of State Constitutions*, 33 RUTGERS L.J. 799 *passim* (2002); Burt Neuborne, *State Constitutions and the Evolution of Positive Rights*, 20 RUTGERS L.J. 881, 893–901 (1989).

33. ZACKIN, *supra* note 32, at 2.

34. *Id.* at 3.

35. Sean Beienburg, *Constitutional Resistance in the States, 1880–2010* (2015) (unpublished Ph.D. dissertation, Princeton University) (on file with author); Robinson Woodward-Burns, *American Reconstitution: How the States Stabilize American Constitutional Development* (2017) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file author).

American political development. Her contributions are impressive and wide-ranging in this concise and well-written book.

## II. AMERICAN POLITICAL DEVELOPMENT AND AMERICAN CONSTITUTIONALISM

After the 1960s and 70s, when historians took a cultural turn and political scientists took a behavioral turn, the subfield of American political development (“APD”) was born.<sup>36</sup> Scholars of law, history, policy, sociology, and political science who are interested in history and historical institutional approaches to the study of politics often connect through APD.<sup>37</sup> The subfield uses large-scale historical investigations to determine the temporal construction of political authority and how institutions and citizens react.<sup>38</sup> The work of Walter Dean Burnham, Louis Hartz, Theodore Lowi, and other scholars started to deal with the big questions of American politics and explain development over time.<sup>39</sup> It was, however, the next generation of scholars that founded APD in the early 1980s—Amy Bridges, Richard Bense, Karen Orren, Elizabeth Sanders, Theda Skocpol, and Stephen Skowronek to name a few. An important component of work in APD is the recognition that the state should be considered an actor in politics, not something passively shaped by outside forces.<sup>40</sup> Suzanne Mettler and Richard Valelly note that one of the virtues of APD is that scholars can employ a “wide-angle lens” and thus trace major shifts at the regime level.<sup>41</sup> Many investigate the growth of the central state authority, bureaucracy, and other institutional features of the national system, often during the late nineteenth century when the Civil War transformed the scope and authority of the federal government, though others (like Bridges in *Democratic Beginnings*) look

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36. John Gerring, *APD from a Methodological Point of View*, 17 *STUD. AM. POL. DEV.* 82, 84–85 (2003).

37. *Id.* at 82–85.

38. *Id.* at 86.

39. WALTER DEAN BURNHAM, *CRITICAL ELECTIONS AND THE MAINSPRINGS OF AMERICAN POLITICS* (1970); LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955); THEODORE J. LOWI, *THE END OF LIBERALISM: THE SECOND REPUBLIC OF THE UNITED STATES* (1979).

40. See generally *RETHINKING POLITICAL INSTITUTIONS: THE ART OF THE STATE* (Ian Shapiro et al. eds., 2006); Theda Skocpol, *Bringing the State Back In: Current Research, in BRINGING THE STATE BACK IN 3* (Peter B. Evans et al. eds., 1985).

41. Suzanne Mettler & Richard M. Valelly, *Introduction: The Distinctiveness and Necessity of American Political Development*, in *THE OXFORD HANDBOOK OF AMERICAN POLITICAL DEVELOPMENT 1, 3* (Richard M. Valelly et al. eds., 2016).

to political development elsewhere—in the states or cities, many times driven by local citizens and social movements.<sup>42</sup>

Some who work on APD emphasize “path dependence,” a concept that describes the growing costs of changing course over time, especially in institutional development.<sup>43</sup> Others focus on “intercurrence,” or multiple political orders (sometimes within a given institution) progressing at different temporal speeds and logics from different origin points.<sup>44</sup> APD scholars are also interested in historical progression after “critical junctures.”<sup>45</sup> These junctures, often during the creation of an institution

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42. See, e.g., KAREN ORREN & STEPHEN SKOWRONEK, *THE SEARCH FOR AMERICAN POLITICAL DEVELOPMENT* 19, 61 (2004); *STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN HISTORICAL PERSPECTIVE* (Sven Steinmo et al. eds., 1992); see also, e.g., RICHARD FRANKLIN BENSEL, *SECTIONALISM AND AMERICAN POLITICAL DEVELOPMENT, 1880–1980* (1984); RICHARD FRANKLIN BENSEL, *THE POLITICAL ECONOMY OF AMERICAN INDUSTRIALIZATION, 1877–1900* (2000); RICHARD FRANKLIN BENSEL, *YANKEE LEVIATHAN: THE ORIGINS OF CENTRAL STATE AUTHORITY IN AMERICA, 1859–1877* (1990); AMY BRIDGES, *A CITY IN THE REPUBLIC: ANTEBELLUM NEW YORK AND THE ORIGINS OF MACHINE POLITICS* (1984); AMY BRIDGES, *MORNING GLORIES: MUNICIPAL REFORM IN THE SOUTHWEST* (1999); ELIZABETH M. SANDERS, *ROOTS OF REFORM: FARMERS, WORKERS, AND THE AMERICAN STATE, 1877–1917* (2000); THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* (1992); STEPHEN SKOWRONEK, *BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES 1877–1920* (1982); ROGERS SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* (1997). Their successors have built on this work by incorporating the politics and history of the twentieth century. See, e.g., DANIEL CARPENTER, *THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATION IN EXECUTIVE AGENCIES, 1862–1928* (2001); MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000); PAUL FRYMER, *BLACK AND BLUE: AFRICAN AMERICANS, THE LABOR MOVEMENT, AND THE DECLINE OF THE DEMOCRATIC PARTY* (2008); JACOB S. HACKER, *THE DIVIDED WELFARE STATE: THE BATTLE OVER PUBLIC AND PRIVATE BENEFITS IN THE UNITED STATES* (2002); KEN I. KERSCH, *CONSTRUCTING CIVIL LIBERTIES: DISCONTINUITIES IN THE DEVELOPMENT OF AMERICAN CONSTITUTIONAL LAW* (2004); DANIEL THOMAS KRYDER, *DIVIDED ARSENAL: RACE AND THE AMERICAN STATE DURING WORLD WAR II*, (2000); ROBERT W. MICKEY, *PATHS OUT OF DIXIE: THE DEMOCRATIZATION OF AUTHORITARIAN ENCLAVES IN AMERICA’S DEEP SOUTH* (2013); SUZANNE METTLER, *THE SUBMERGED STATE: HOW INVISIBLE GOVERNMENT POLICIES UNDERMINE AMERICAN DEMOCRACY* (2011); PAUL NOLETTE, *FEDERALISM ON TRIAL: STATE ATTORNEYS GENERAL AND NATIONAL POLICYMAKING IN CONTEMPORARY AMERICA* (2015); ERIC SCHICKLER, *DISJOINTED PLURALISM: INSTITUTIONAL INNOVATION AND DEVELOPMENT OF THE U.S. CONGRESS* (2001); SARAH STASZAK, *NO DAY IN COURT: ACCESS TO JUSTICE AND THE POLITICS OF JUDICIAL RETRENCHMENT* (2015); RICHARD M. VALELLY, *THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK EQUALITY* (2004).

43. See PAUL PIERSON, *POLITICS AND TIME* 10–11 (2004); Paul Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94 AM. POL. SCI. REV. 251, 251–53 (2000).

44. ORREN & SKOWRONEK, *supra* note 42, at 113.

45. DAVID COLLIER & RUTH BERINS COLLIER, *SHAPING THE POLITICAL ARENA: CRITICAL JUNCTURES, THE LABOR MOVEMENT, AND REGIME DYNAMICS IN LATIN AMERICA* 29 (1991).

or a momentous event (war, economic recession, major election, etc.), affect political outcomes.<sup>46</sup> APD is not just concerned with tracing institutional change; many scholars trace development of ideas and their effect on politics.<sup>47</sup> The processes and events under investigation are rarely uniform or rational, and “development” does not necessarily mean “progress” as in the traditional Whiggish vision of history.<sup>48</sup> In fact, there is a debate within the subfield over how exactly to define “development.” Orren and Skowronek define political development as “a durable shift in governing authority.”<sup>49</sup> The resistance to this approach is that it seems to limit the “political” to state institutions, which could potentially ignore, or at least minimize, lower level changes in policy regimes and citizen participation in society and government. Regardless, the constitutional creation outlined in *Democratic Beginnings* defines the underlying rules of the political game, so there is no more durable shift in governing authority.<sup>50</sup> APD has come to include a variety of topics and time periods. It is such a fruitful approach to the study of American politics because it incorporates tools from other disciplines but remains committed to the goals of social science inquiry.

*Democratic Beginnings* is APD at its best, which is unsurprising since Bridges is one of the founders of the subfield, but this book is not just for an APD or even Law and APD audience.<sup>51</sup> Bridges’s findings and analysis add to the broader scholarship on American constitutionalism. While much of the APD literature considers the growth of the American central authority, it is not limited to inquiry at the federal level. The work on American constitutionalism or constitutional development, on the other hand, often fails to acknowledge state constitutions or state conventions at all. Because the U.S. Constitution is so difficult to amend, scholars

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46. See generally Kathleen Thelen, *How Institutions Evolve: Insights from Comparative Historical Analysis*, in *COMPARATIVE HISTORICAL ANALYSIS IN THE SOCIAL SCIENCES* 208 (James Mahoney & Dietrich Rueschemeyer eds., 2003).

47. For treatment of the relative power of ideas and institutions, see Rogers M. Smith, *Which Comes First, the Ideas or the Institutions?*, in *RETHINKING POLITICAL INSTITUTIONS: THE ART OF THE STATE* 91–113 (Ian Shapiro et al. eds., 2006); Brian J. Glenn, *The Two Schools of American Political Development*, 2 *POL. SCI. REV.* 153, 161 (2004); Marie Gottschalk, “It’s the Health-Care Costs, Stupid!”: *Ideas, Institutions, and the Politics of Organized Labor and Health Policy in the United States*, 14 *STUD. AM. POL. DEV.* 234, 235–36 (2000); Robert C. Lieberman, *Ideas, Institutions, and Political Order: Explaining Political Change*, 96 *AM. POL. SCI. REV.* 697, 698–700 (2002); Karen Orren, *Ideas and Institutions*, 28 *POLITY* 97, 97 (1995).

48. See KERSCH, *supra* note 42, at 2–3.

49. ORREN & SKOWRONEK, *supra* note 42, at 123.

50. Some constitutions are easier to amend than others, but all create a set of constraints on the activity of governing officials much greater than statutory law.

51. For an excellent overview of the work on Law and APD, see Paul Frymer, *Law and American Political Development*, 33 *L. & SOC. INQUIRY* 779, 779 (2008).

focus almost exclusively on Supreme Court jurisprudence. Keith E. Whittington articulates the problem: “constitutional law substitutes for the Constitution, and the exercise of judicial review is regarded as tantamount to constitutionalism itself.”<sup>52</sup> Bridges has produced convincing evidence that the states and state conventions should be part of our broader understanding of American political development and American constitutionalism.

There is a short section in the introduction of *Democratic Beginnings* titled “How to Study State Constitutions” that explains in clear, accessible prose how she investigates the subject.<sup>53</sup> I owe much to the Bridges approach in my work on state constitutions.<sup>54</sup> She reminds us that “[u]nderstanding the decisions delegates made requires attention both to the institutional characteristics of constitutional conventions and to time and place.”<sup>55</sup> Bridges argues convincingly that time matters over the six decades covered in the book—the chapters are wisely arranged accordingly—from “Frontier Foundings”<sup>56</sup> beginning in 1850 (CA, NV, OR) to “Managing the Periphery”<sup>57</sup> (Gilded Age conventions of CO, ID, MT, UT, WA, WY) to the “Progressive Settlements”<sup>58</sup> of 1910 (AZ, NM). Bridges also recognizes that time matters at “shorter intervals of sequence,” such as the borrowing that took place from other recent state constitutions or even the chronology of votes or debate within a given convention.<sup>59</sup> The primary theme of the book, however, is the importance of place, and from that broad idea, Bridges constructs a new understanding of state constitutionalism and the West.

### III. REGION AND STATE CONSTITUTIONS

As a southerner, southernist, and author of a book on state constitutionalism in the American South, I have rarely been questioned on the relevance of my regional focus. Dixie has always been a curious outlier in American political development, so there is never a need to make much of an argument that the study of southern politics is important. But the former Confederacy is not the only fascinating group

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52. WHITTINGTON, *supra* note 8, at 1.

53. BRIDGES, *supra* note 6, at 18.

54. PAUL E. HERRON, *FRAMING THE SOLID SOUTH: THE STATE CONSTITUTIONAL CONVENTIONS OF SECESSION, RECONSTRUCTION, AND REDEMPTION, 1860–1902*, at 19 (2017).

55. BRIDGES, *supra* note 6, at 19.

56. *Id.* at 27.

57. *Id.* at 59.

58. *Id.* at 103.

59. *Id.* at 19–20.

of eleven states. Somehow the West was won but then forgotten by students of American politics. *Democratic Beginnings* brings the West into the study of APD. Bridges rightly notes that scholars of politics and history base their understanding of the United States “heavily on the history of the Northeast, secondarily on the South, and on the West hardly at all.”<sup>60</sup> The South is endlessly fascinating because there is a curious coexistence of brutality and elegance, and of American ideals and American separatism, all cut through by the devastating legacies of slavery. But Bridges reminds us that:

The West also had a distinctive population, counting tens of thousands of Native Americans, few African Americans, populous Mexican regions incorporated by the US conquest of Mexico, Anglos from the East, and—working alongside them in the mines, towns, and forests and on ranches and the railroads—European immigrants, Mexicans, and Chinese.<sup>61</sup>

Through her investigation of state constitutional conventions, with close attention to territorial governments and regional political economy, Bridges convincingly shows how that distinctive population created a distinctive history.<sup>62</sup>

Tarr separates part of his analysis by region in *Understanding State Constitutions*, indicating a recognition that geography and patterns of settlement affected state constitutional development.<sup>63</sup> In an older publication, Daniel Elazar attempts to explain the phenomenon by identifying six constitutional patterns: (1) the Commonwealth pattern, largely found in New England, that emphasizes constitution as a covenant for civil society and frame of government—the documents are shorter and have not been regularly altered; (2) the Commercial Republic pattern, found in the middle states below New England, that required compromises to deal with ethnic and commercial interests and early development of commercial cities—these states have had more revision; (3) the Southern Contractual pattern that he claims reflects a “casual attitude” toward fundamental charters due to substantial constitutional change before and after the Civil War—southerners also used the fundamental law to perpetuate racial segregation and “accommodate the swings between oligarchy and factionalism characteristic of Southern state politics”; (4) the Civil Code pattern only

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60. *Id.* at 6.

61. *Id.* at 7.

62. *Id.* at 5.

63. TARR, *supra* note 11, at 127–33.

present in Louisiana, due to its French background; (5) the Frame of Government pattern, present in the far West, that contained provisions that reflected the region and frontier mentality with moderate revision and shorter documents; and (6) the Managerial pattern of Alaska and Hawaii that embody modern reforms around local government, the environment, and social legislation.<sup>64</sup> This effort to simplify the complex is commendable, but it ultimately fails and shows the need for rigorous and careful analysis of regional influence on state constitutionalism like that on display in *Democratic Beginnings*.

In another publication, Elazar offers a compelling insight that gets to the heart of why Bridges has written such an important book. He writes that constitutions are essential for understanding a state's political culture or "persistent patterns of underlying political attitudes and values,"<sup>65</sup> because "the predominant political forces in the state tend to enshrine their basic political values in the state charter."<sup>66</sup> Bridges highlights the fact that delegates saw themselves as westerners.<sup>67</sup> This identity in turn affected debates and how and where they borrowed constitutional provisions—often from Illinois and Missouri at first, since during the 1870s they were considered western states.<sup>68</sup> Region is not just a construct imposed today; it was a paramount consideration to the people who fill the pages of this book—thus it is essential that scholarship reflect that reality.

One of the most interesting features of *Democratic Beginnings* is that it is not just about state constitutions; it is an origin story of the western states. Bridges is aware of this dynamic, which is reflected in her choice of title and in the primary themes of the book. She writes, "[s]tate constitutions are fundamental law, blueprints for government institutions, statements of principles, values, and goals, and declarations of collective identity, written with fostering settlement and prosperity in mind."<sup>69</sup> Bridges finds two themes that are shared by the western conventions: "their distinctive mission" and "delegates' frequent encounters with new and puzzling situations, for which they were without precedent in law or policy."<sup>70</sup> She uses these themes to explore

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64. Daniel J. Elazar, *The Principles and Traditions Underlying State Constitutions*, 12 PUBLIUS 11, 18–22 (1982).

65. DANIEL J. ELAZAR, CITIES ON THE PRAIRIE: THE METROPOLITAN FRONTIER AND AMERICAN POLITICS 256 (1970).

66. TARR, *supra* note 11, at 55.

67. BRIDGES, *supra* note 6, at 14–15.

68. *Id.* at 15.

69. *Id.* at 1.

70. *Id.*

the founding of the West and demonstrate the value of studying state constitutions and state conventions.

#### IV. TIME AND PLACE

The “distinctive mission” is distinctive for several reasons. First, the project of any state constitutional framer is different from that of the Founding Fathers. The document created in Philadelphia was one of enumerated powers in a limited national government, the goal of which was to unite disparate interests from thirteen separate and, in many ways, autonomous states.<sup>71</sup> The authors of the U.S. Constitution were also operating based on political and social thought as of 1787.<sup>72</sup> The debates revolved around the allocation of power among the states, among the branches, and between the states and the new federal government.<sup>73</sup> Second, the project of any state constitutional framer is always distinctive from other state constitutional framers who came before them. Bridges notes that delegates often based their work on “accumulated wisdom” and “[c]ontinuous learning” from governing practice in the territories and other states—a function of the point in time in which they gathered to debate fundamental principles, rights, and institutions of governance.<sup>74</sup> Here she takes the critique by Gardner about excessive borrowing and demonstrates that the use of provisions from other state constitutions was not evidence of laziness or lack of imagination; it was the opposite. Western delegates used provisions from other similar states that had recently adopted constitutions with great thought and purpose, indicating that time mattered.

One of the virtues of this book is that Bridges lets the state constitution makers speak for themselves. To that end, I think it is worth including one of the extended quotes she selected to explain how delegates recognized that as conditions changed, some constitutional ideas became obsolete. J.F. King, a member of the founding convention in Oklahoma (1906–1907), said that “[t]ime”

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71. GARY GERSTLE, *LIBERTY AND COERCION: THE PARADOX OF AMERICAN GOVERNMENT FROM THE FOUNDING TO THE PRESENT* 20–23 (2015).

72. See, e.g., BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); ALISON LA CROIX, *THE IDEOLOGICAL ORIGINS OF AMERICAN FEDERALISM* (2010); DONALD S. LUTZ, *THE ORIGINS OF AMERICAN CONSTITUTIONALISM* (1988).

73. JACK N. RAKOVE, *ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION* 57–60 (1996).

74. *Id.* at 2–3. Dinan and Tarr also point out that state constitution makers relied on the work of other conventions in their deliberations, often in the form of pamphlets containing the text of state constitutions. DINAN, *supra* note 10, at 15; TARR, *supra* note 12, at 66.

impairs constitutions as it does all things and if they be not amended and repaired to meet changed conditions, new questions, and the ever-altering situations of an enterprising and progressive people, there is an end to good government. . . . And as fast as great questions of government policy emerge settled from the political arena, the field and the forum they should be embodied in the Constitution that they may become a permanent guide to the official and an inspiration and a protection to the people. . . . This and every other generation of a free people has its own peculiar problems to face in Constitution making. . . . We would be unworthy sons of worthy sires if we fail to meet and courageously solve the problems now pressing upon our people for solution.<sup>75</sup>

This language also shows how delegates often debated the propriety of making their documents easily amendable in the future, something Bridges highlights in the differing “Progressive settlements” in Arizona and New Mexico—Arizona adopted a straightforward amendment process, while NM made it difficult to change the constitution.<sup>76</sup>

The distinctive temporal mission of state constitution makers in the West is on full display throughout the book. In the 1850s, delegates in California and Oregon managed the new dangers posed by banks and limited liability corporations.<sup>77</sup> Those in Nevada dealt with railroads and industry in the following decade, all while the Union and Confederacy battled, which precipitated fights over voting rights and loyalty oaths.<sup>78</sup> In all three states, conventions believed in “the importance of citizen character in a republic” and therefore frequently deliberated on issues of morality.<sup>79</sup> The rise of corporations and the Civil War presented problems separate and distinct from the Founding and from early state conventions that drove debate and constitutional design. In California, delegates took provisions from Iowa and New York, and they had to navigate the Treaty of Guadalupe Hidalgo.<sup>80</sup> These first western conventions confronted national issues and drafted documents that were a product of their time.

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75. BRIDGES, *supra* note 6, at 3 (quoting ALBERT ELLIS, A HISTORY OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OKLAHOMA 60–64 (1923)).

76. *Id.* at 109.

77. *Id.* at 28.

78. *Id.*

79. *Id.* at 29.

80. *Id.* at 40. The Treaty of Guadalupe Hidalgo marked the end of the Mexican-American War in 1848; it included settlement of land disputes and rights for individuals living in those areas.

The next two sets of western conventions were also driven by the major issues of their day:

The central narratives of the Gilded Age—the appearance of large corporations, clashes between labor and capital, the mobilization of farmers, the rise of populist sentiment, and the settlement of the West—were all elaborated at western conventions held between 1876 and 1895: Colorado, Washington, Wyoming, Montana, Utah, Idaho, and California’s second (1878).<sup>81</sup>

By the 1870s, it was more common practice to write longer bills of rights, and western conventions adopted extensive protections for their citizens, including positive rights like public education.<sup>82</sup> Delegates again contended with powerful corporations and railroads, like their predecessors in California, Oregon, and Nevada.<sup>83</sup> Citizens expected a more active and accountable government (especially after the growth of power and responsibilities of the federal government during the Civil War), in contrast to earlier approaches that limited institutional power to limit the potential for tyranny.<sup>84</sup> At the same time, western delegates displayed a growing suspicion of government corruption and included a variety of “shall not” provisions restricting the powers of the state legislature.<sup>85</sup> The debates and compromises were “a shared recognition of contemporary dilemmas.”<sup>86</sup> When Arizona and New Mexico called conventions in 1910, they debated issues of direct democracy, protections for labor, and the regulation of corporations.<sup>87</sup>

If time mattered in the creation of western state constitutions—and it surely did—place mattered more. Their “distinctive mission” was also distinctive in that it was western, which connects nicely to the second theme that Bridges traces across the conventions: “frequent encounters with new and puzzling situations, for which they were without precedent in law or policy.”<sup>88</sup> Delegates innovated when accumulated wisdom could provide no answers. Not only did they have to decide how to address the rise of corporations and other emerging issues, they had to make law in

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81. *Id.* at 13.

82. *Id.* at 60.

83. *Id.* at 81–88.

84. MORTON KELLER, *AFFAIRS OF STATE: PUBLIC LIFE IN LATE NINETEENTH CENTURY AMERICA* 85–87, 122–25 (1977).

85. BRIDGES, *supra* note 6, at 16.

86. *Id.* at 100.

87. *Id.* at 103.

88. *Id.* at 1.

areas that were exclusively western—water rights, mining, and labor laws—that reflected the trades of the region’s unique geography.<sup>89</sup> Bridges shows over and over how these state constitutional conventions solved new challenges and helped forge the West out of rough and wild territories.

Bridges notes that “[f]or settlers in the far western territories, recognition of the immense distance between themselves and the nation’s capital, as well as the established states to their east, pervades reports from the territories and provides a subtext for deliberations in the constitutional conventions.”<sup>90</sup> California, Oregon, and Nevada were quite different societies, and part of the mission of the convention delegates was to define their identities as territories and as states.<sup>91</sup> Californians saw themselves as “a laboring people,” who toiled both in the gold mines and in commercial pursuits.<sup>92</sup> Oregonians were first trappers, then missionaries seeking to convert Native Americans, then farmers and miners.<sup>93</sup> Nevadans were transformed by the Comstock Lode when corporate miners replaced prospectors.<sup>94</sup> Distance from the East, the feeling of abandonment by the federal government—which failed to even draw boundaries or allow for a territorial legislature—and the freedom associated with the wealth that flowed from the gold rush empowered California delegates to ignore the voting requirements under the Treaty of Guadalupe Hidalgo and create provisions that were hostile toward limited liability corporations and banks.<sup>95</sup> Oregon delegates accepted corporations as public “associations” and “focused on tending their own garden.”<sup>96</sup> And Nevada’s convention was defined by struggles over taxation and the power of mining corporations.<sup>97</sup> All three of these first western states encountered new issues that were complicated by geography.

Chapter Three, “Managing the Periphery,” is the heart of the book and provides the best evidence of innovation in the face of novel challenges. Water rights, for instance, “posed issues with enormous economic stakes, high salience, difficult choices, and complex puzzles.”<sup>98</sup>

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89. *Id.*

90. *Id.* at 27.

91. *Id.* at 9.

92. *Id.* at 34.

93. *Id.* at 35.

94. *Id.* at 37. The Comstock Lode was the first major discovery of silver ore in the United States.

95. *Id.* at 56.

96. *Id.*

97. *Id.* at 55.

98. *Id.* at 70–71.

Colorado delegates were the first to craft constitutional rules for property in water; the Gilded Age conventions that followed built on their work.<sup>99</sup> Water was in short supply in the western territories, so a system of irrigation was essential. The question was whether private or public companies should take on the task, and, more importantly, how to create a legal framework for property in water. Bridges shows that “this was a peculiarly western problem, and here as so often, delegates were writing without precedents.”<sup>100</sup> They could not rely on the system of riparian rights—giving control to adjacent landholders—that existed in the East, where water was plentiful. Rights of first appropriation, as was the practice in mining, could injure the property and livelihood of others downstream, which was especially problematic when mining corporations diverted this indispensable resource from farmers. “Colorado’s deliberations present the parameters of subsequent convention debates: riparian rights; right of prior appropriation; the hierarchy of domestic use, agriculture, industry; government price setting; and, at least implicitly, the courts.”<sup>101</sup> California delegates feared corporate control of water rights in their second constitutional convention (1878); Idaho and Montana engaged in some of the same debates.<sup>102</sup> Wyoming declared that “[w]ater is state property” and created institutions (four water divisions with superintendents, engineers, and a Board of Control) to deal with appropriation—influenced by the presence of ranchers in the convention.<sup>103</sup> Bridges demonstrates that the constitutionalization of water rights resulted from the unique landscape of the West.<sup>104</sup>

During the Gilded Age, disputes over railroads and corporations were a national concern, but western delegates confronted out-of-state owners and the dangers of exploitation that came with the potential of investment and wealth.<sup>105</sup> The region also relied on railroads to transport the heavy materials mined from the ground back to markets in the eastern states.<sup>106</sup> Bridges shows how the debates reflected both fears of isolation and the courage to regulate.<sup>107</sup> The constitutional protection of labor was part of this western effort to curb corporate power.<sup>108</sup> In

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99. *Id.*

100. *Id.* at 72.

101. *Id.* at 74.

102. *Id.* at 76–77.

103. *Id.* at 78–79.

104. *Id.* at 70–71.

105. *Id.* at 81–82.

106. *Id.*

107. *Id.* at 83–84.

108. *Id.* at 88.

fact, few constitutions elsewhere contained restrictions on ironclad contracts—which required employees to agree not to sue for injuries—private militias, working hours, mechanic’s liens, or labor for women and children.<sup>109</sup> Bridges highlights the fact that the western conventions listened to testimony from workers but also contained owners of industry, so labor did not get everything it wanted.<sup>110</sup> The dangers associated with mining certainly spurred action. Even the U.S. Supreme Court during the *Lochner* Era upheld a Utah state law limiting working hours for miners.<sup>111</sup> As of the end of the nineteenth century, the West suffered from “uneven development” of corporations, and constitution makers resisted the kinds of accommodations for industry that dominated in other parts of the nation.<sup>112</sup> Bridges reveals that this was not just a delay; it was an exceptional approach in an exceptional region—one that was also at the forefront of giving voting rights to women and the direct election of senators.<sup>113</sup>

The Progressive Era conventions of Arizona and New Mexico were also brimming with regional concerns and issues. Arizona was progressive and New Mexico conservative, but they were both unquestionably western.<sup>114</sup> Delegates again confronted corporate regulation and protection of labor—which appeared even in the conservative New Mexico constitution.<sup>115</sup> The new issue of direct democracy—the initiative and referendum and the right of recall—dominated debates, and unsurprisingly Arizona opted for more democracy and New Mexico less, though the large Mexican population in New Mexico resulted in egalitarian protections for Spanish-speaking voters and officials.<sup>116</sup> Bridges also presents the debates over changing master and servant law to “weaken the doctrines of assumption of risk, fellow servant, and contributory negligence and to bar ironclad contracts.”<sup>117</sup> Delegates were again facing new challenges, challenges that were separate and different from those of the now densely-settled East. Bridges quotes Wiley Tinnin, a member of the 1878 California state convention, who said, “We are embarking on a new era. We stand upon

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109. *Id.* at 92.

110. *Id.* at 97.

111. *Holden v. Hardy*, 169 U.S. 366, 397–98 (1898).

112. BRIDGES, *supra* note 6, at 100.

113. *Id.* at 153–55.

114. *Id.* at 103.

115. *Id.* at 124–28.

116. *Id.* at 130.

117. *Id.* at 120.

the shores of an unknown and unexplored sea.”<sup>118</sup> This sentiment binds time and place together and demonstrates their essential influence on western state constitution makers.

#### V. CONCLUSION

Amy Bridges has written a remarkable book. The conventions she examines “trace the arc of western development from the last antebellum decade to the height of the Progressive Era.”<sup>119</sup> I should mention that there is some other excellent scholarship on this topic—most notably by historians David Johnson and Gordon Bakken—but none of it offers a comprehensive account of early western state constitutional development and a clear explanation of why writing the constitutions of the western states was so important to American politics and law.<sup>120</sup> This is where *Democratic Beginnings* shines. It is amazing that one book can accomplish so much. I conclude this essay by highlighting some additional wisdom from the western conventions that further refutes the idea that there is a poverty of discourse in state constitutionalism, while offering some thoughts on how Bridges’s findings about the West compare to some of my own findings about the South.

Perhaps the most surprising feature of *Democratic Beginnings* is the optimism that comes through about American democracy and the process of state constitution making. It is the one area in which I might be inclined to be critical of the analysis if Bridges had not backed up this perspective with so much evidence from the debates. She contends that “[t]he constitutional convention was quite different than territorial and state legislatures, and its distinctive characteristics resulted in conversations and decisions more representative of and responsive to public opinion.”<sup>121</sup> Delegates were more representative and responsive

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118. *Id.* at 100 (quoting 2 E.B. WILLIS & P.K. STOCKTON, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA 1020 (State Printing Office, 1881)).

119. *Id.* at 26.

120. See, e.g., GORDON MORRIS BAKKEN, ROCKY MOUNTAIN CONSTITUTION MAKING 1850–1912 (1987); DAVID ALAN JOHNSON, FOUNDING THE FAR WEST: CALIFORNIA, OREGON, AND NEVADA, 1840–1890 (Univ. of Cal. Press ed., 1992); Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West*, 25 RUTGERS L.J. 945 (1994); John D. Hicks, *The Constitutions of the Northwest States*, U. STUD., Jan.–Apr. 1923, at 1; G. Alan Tarr & Robert F. Williams, *Foreword: Western State Constitutions in the American Constitutional Tradition*, 28 N.M. L. REV. 191 (1998); John Welling Smurr, *Territorial Constitutions; A Legal History of Frontier Governments Erected by Congress in the American West, 1787–1900* (June 1960) (unpublished Ph.D. dissertation, Indiana University).

121. BRIDGES, *supra* note 6, at 9.

because they were “elected by popular vote,” they “had every reason to believe the public was attentive to their deliberations,” they “were not elite assemblies . . . there was representation of a territory’s major occupations”—though not necessarily in proportion to their numbers—and their work ultimately had to be ratified by popular vote.<sup>122</sup> Bridges argues that the men who gathered to found the western states were “superior in talent and intent to state or territorial legislators,” and they worked hard for many days and weeks away from home and family to produce the best possible results.<sup>123</sup> They usually had to find points of compromise because “[m]ore than other regions, the West enjoyed competitive party politics, and elections of delegates resulted, in most territories, in conventions without a predominant party.”<sup>124</sup>

After writing my own regional study of constitutionalism, *Framing the Solid South: The State Constitutional Conventions of Secession, Reconstruction, and Redemption, 1860-1902*,<sup>125</sup> I find it difficult to be optimistic about the history of American democracy as it relates to the creation and amendment of the fundamental law in the states. I investigate an unprecedented series of conventions that served to consolidate the southern states in opposition to federal authority, a posture which resulted in some of the most consequential political conflicts of the twentieth century.<sup>126</sup> During three waves of development, secession, Reconstruction, and Redemption (when white conservatives “redeemed” state governments and secured white supremacy), in just over four decades, the South revised state constitutions at an incredible rate, calling more than four times the number of conventions as the rest of the nation.<sup>127</sup>

The southern conventions that gathered from 1860 to the turn of the twentieth century were not responsive to public opinion in any real sense. The secessionists were driven by elite concerns over slavery, and the vast majority refused to even send out the ordinances of disunion for popular ratification.<sup>128</sup> During Reconstruction, both Presidential and Congressional, the federal government placed restrictions on who could serve as delegates and culled the electorate for the convention vote and ratification votes, even rewriting the law and applying it retroactively when opponents of the new constitution in Alabama successfully boycotted the election to undermine the required majority of all

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122. *Id.* at 9–10.

123. *Id.* at 10–11.

124. *Id.* at 67.

125. HERRON, *supra* note 54.

126. *Id.* at 13.

127. *Id.* at 11–12.

128. *Id.* at 183.

registered voters for ratification.<sup>129</sup> And the larger project of Redemption was to disempower government—moving in the opposite direction of progressive westerners—and undermine the rights of African Americans and poor whites, from public education to suffrage.<sup>130</sup> None of the final set of white supremacist conventions sent out their work for ratification.<sup>131</sup> Southern delegates came from a variety of backgrounds and occupations, but party politics was always so lopsided that real compromise was rarely necessary.<sup>132</sup> The kind of hopeful vision presented in *Democratic Beginnings* appeared only briefly during Congressional Reconstruction, when Republicans, both black and white, saw the opportunity to remake southern politics.<sup>133</sup> Unfortunately, this was an illusion, temporarily propped up by federal political and military support—both of which soon disappeared.<sup>134</sup>

I do, however, find some similarities in the southern and western constitutional experiences. Unsurprisingly, race dominated debates over the fundamental law in the South—a dynamic that poisoned deliberations and undermined the legitimacy of each wave of conventions. The West was not immune to racial issues, from the fight over suffrage in the Treaty of Guadalupe Hidalgo to labor disputes that revolved around Chinese immigrants. Bridges demonstrates the hard work and innovation in the western conventions, while highlighting the contributions of particularly dynamic and talented individuals. Southern constitution makers were also hard working and innovative—unfortunately some of their most creative provisions were in service of white supremacy and undermining the Fifteenth Amendment to the U.S. Constitution. Big personalities dominated conventions in Dixie. And, like the West, delegates were perpetually concerned with national political issues—secession was driven by a national debate over slavery and state sovereignty, the Reconstruction conventions were largely controlled by the national government and acted as proxies for national debates over rights and power, and during Redemption, southerners defined their mission in opposition to federal authority and other outside interference.<sup>135</sup> Bridges shows how western states faced more detailed enabling acts, so conventions saw Congress and the president as “critical audiences” and often feared denial of the application for statehood; this was especially pressing in Arizona and New Mexico, where delegates

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129. *Id.* at 122–24.

130. *Id.* at 185, 199–201.

131. *Id.* at 231.

132. *See generally id.*

133. *Id.* at 183.

134. *Id.* at 185–87.

135. *Id.* at 74–75, 121–23, 210–17.

were concerned about garnering the approval of President Taft.<sup>136</sup> Reconstruction presented a similar dynamic of federal oversight and control of constitutional deliberations.

The Gardner critique that state constitutions are too long and filled with all manner of unnecessary language that should be left to the state legislature is on full display in the South. In fact, the region has, on average, the longest constitutions in the nation. Some southern delegates objected to certain provisions on the basis that they were legislative in nature, but this usually indicated their policy preferences more than their constitutional principles. Bridges found western delegates were purposeful when lodging legislation into the fundamental law.<sup>137</sup> This was a defensive measure to secure rights and institutions.<sup>138</sup> One Arizona delegate explained that they could not trust the legislature to enact needed changes: "For twenty-five years labor has been knocking at the doors of the legislature for an employers' liability act, and has not gotten it."<sup>139</sup> Bridges writes, "Legislation was in constitutions because constitutions were the most secure place for measures to which delegates were committed. Constitutional provisions were safe from state supreme courts. They were safe from legislative meddling, indifference, or corruption."<sup>140</sup> The party competition she highlights also played a part in this approach. This discovery changed my outlook on state conventions and melted away some of the cynicism that accumulated during my research on the South, where provisions were often lodged in constitutions for nefarious reasons.

There are a few additional insights that deserve mention. Bridges shows that these western conventions were sometimes a special opportunity for ordinary citizens—most notably organized labor—to make their mark on the law. They provided a forum for constitutional conversations that unfolded over great social distances. And because of her careful attention to time and place, we see each convention in its own historical moment, which is especially apparent during the Gilded Age and in Progressive Era fights for democratizing reforms and the attempts to revise the law of master and servant. Bridges shows us the value in looking at the other periphery of American politics. The West can tell us many things that the South cannot, and Bridges gives the reader a

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136. BRIDGES, *supra* note 6, at 13, 114, 130.

137. *Id.* at 15.

138. *Id.*

139. *Id.* at 122–23. (quoting JOHN S. GOFF, *THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910*, at 545 (1991)).

140. *Id.* at 143.

wealth of information and background through her thorough characterization of the various western economies.

*Democratic Beginnings* is filled with insights for scholars of law, history, and politics. Bridges displays an amazing amount of knowledge about these conventions, and she has done a great service for those of us who study state constitutions and American constitutionalism. It is a treat that so many of her findings are unexpected and original. The elements I have highlighted in this review are but a small sample of the innovative and imaginative analysis that Bridges unleashes in *Democratic Beginnings*. She certainly fulfills her promise of “adding an account of the West to state constitutions, and a report of western development to US politics and history,” but the book accomplishes so much more.<sup>141</sup> This distinctive region deserves such a compelling and distinctive origin story.

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141. *Id.* at 6.

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