

**THE CAREER OF ROBERT WILLIAMS: AN APPRECIATION***G. Alan Tarr\**

Robert Williams has for decades been the premier legal scholar dealing with American state constitutions and with subnational constitutions in other countries. I had the honor and pleasure of serving as his colleague and collaborator<sup>1</sup> for more than three decades—someone once remarked that our partnership had lasted longer than many marriages and was happier than most as well. I am therefore delighted to contribute to this symposium honoring Professor Williams and recognizing his many accomplishments. My article will briefly highlight his extraordinary contributions as a scholar of American state constitutional law, as a scholar of comparative subnational constitutionalism, as an educator, and as an institution-builder.

## STATE CONSTITUTIONAL LAW

When Professor Williams began his professional career, few scholars and even fewer judges had given much thought to American state constitutions.<sup>2</sup> Judicial reliance on state constitutions to protect

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1. Projects on which we formally collaborated include: *STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: THE AGENDA OF STATE CONSTITUTIONAL REFORM* (G. Alan Tarr & Robert F. Williams eds., 2006) [hereinafter *STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: AGENDA*]; *STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: THE POLITICS OF STATE CONSTITUTIONAL REFORM* (G. Alan Tarr & Robert F. Williams eds., 2006) [hereinafter *STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: POLITICS*]; G. Alan Tarr & Robert F. Williams, *Foreword: Getting from Here to There: Twenty-First Century Mechanisms and Opportunities in State Constitutional Reform*, 36 *RUTGERS L.J.* 1075 (2005); G. Alan Tarr & Robert F. Williams, *Foreword: Western State Constitutions in the American Constitutional Tradition*, 28 *N.M. L. REV.* 191 (1988). But informally we shared thoughts and ideas for more than a quarter century, so often my ideas were the product of our interactions.

2. See William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 *HARV. L. REV.* 489 (1977); Robert F. Williams, *Foreword: Looking Back at the New Judicial Federalism's First Generation*, 30 *VAL. L. REV.* vii, viii (1996); and Ronald K.L. Collins, Peter J. Galie, & John Kincaid, *State High Courts, State Constitutions, and Individual Rights Litigation Since 1980: A Judicial Survey*, 13 *HASTINGS CONST. L.Q.* 599, 600 (1986).

fundamental rights was just beginning, and it was typically referred to as “the new judicial federalism,” with an emphasis on its novelty and serious doubts about its legitimacy.<sup>3</sup> Professor Williams’s writings irrevocably changed that. His articles, such as *In the Supreme Court’s Shadow* and *In the Glare of the Supreme Court*, provided a persuasive justification for judges to take state constitutions seriously, and they offered a methodology for interpreting those documents.<sup>4</sup> His wonderful early essay—*State Constitutional Law Processes*—expanded the scholarly and judicial focus beyond state declarations of rights,<sup>5</sup> while his historical studies of the Pennsylvania and New Jersey Constitutions clarified the distinctive constitutional visions underlying those documents and state constitutions more generally.<sup>6</sup> His pioneering casebook on state constitutional law, now in its fifth edition, revealed the coherence of the state constitutional enterprise, highlighting the best articles and the most enlightening judicial opinions in state constitutional law.<sup>7</sup> And his magisterial *The Law of American State Constitutions* became a fundamental resource for jurists and scholars alike.<sup>8</sup>

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3. See generally SUSAN P. FINO, *THE ROLE OF STATE SUPREME COURTS IN THE NEW JUDICIAL FEDERALISM* (1987); Robin B. Johansen, *The New Federalism: Toward a Principled Interpretation of the State Constitution*, 29 STAN. L. REV. 297, 297 (1977); Hans A. Linde, *First Things First: Rediscovering the States’ Bills of Rights*, 9 U. BALT. L. REV. 379, 380 (1980).

4. Robert F. Williams, *In the Supreme Court’s Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result*, 35 S.C. L. REV. 353, 359 (1984); Robert F. Williams, *In the Glare of the Supreme Court: Continuing Methodology and Legitimacy Problems in Independent State Constitutional Rights Adjudication*, 72 NOTRE DAME L. REV. 1015, 1016, 1018 (1997).

5. Robert F. Williams, *State Constitutional Law Processes*, 24 WM. & MARY L. REV. 169, 172–73 (1983).

6. For Williams’s works concerning the Pennsylvania Constitution, see Robert F. Williams, *The Influences of Pennsylvania’s 1776 Constitution on American Constitutionalism During the Founding Decade*, 112 PA. MAG. OF HIST. & BIOG. 25, 26 (1988); Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania’s Radical 1776 Constitution and Its Influences on American Constitutionalism*, 62 TEMP. L. REV. 541, 545–47 (1989); Robert F. Williams, *Marking the End of Pennsylvania’s Radical Constitutional Experiment*, 139 PITTSBURGH LEGAL J. 45 (Jan. 1991). For his works in regard to the New Jersey Constitution, see PETER J. MAZZEI & ROBERT F. WILLIAMS, “TRACES OF ITS LABORS”: THE CONSTITUTIONAL COMMISSION, THE LEGISLATURE, AND THEIR INFLUENCE ON THE NEW JERSEY CONSTITUTION, 1873–75 6 (2012) (ebook) <http://hdl.handle.net/10929/18741>; ROBERT F. WILLIAMS, *THE NEW JERSEY STATE CONSTITUTION* (2d. ed. 2012); Robert F. Williams, *Afterword: The New Jersey State Constitution Comes from Ridicule to Respect*, 29 RUTGERS L.J. 1037 (1998).

7. ROBERT F. WILLIAMS, *STATE CONSTITUTIONAL LAW CASES AND MATERIALS* (5th ed. 2015).

8. ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* (2009).

The importance of Professor Williams's scholarship was immediately recognized. In 2000 he was invited to give the William P. Homans Lecture before the Massachusetts Supreme Judicial Court Historical Society, and a year later he delivered the Brennan Lecture at the Oklahoma City University School of Law.<sup>9</sup> He has participated in symposia on state constitutional law at law schools throughout the country, addressed the Conference of State Chief Justices and numerous other judicial groups, and testified before several state legislatures. A recent survey found that Professor Williams ranked twenty-fifth among the country's legal scholars in the frequency with which his writings were cited by federal and state courts and that he ranked third in the frequency of citation by state high courts.<sup>10</sup> It is perhaps no surprise that Professor Williams was the only scholar of state constitutions to appear on either list.

Professor Williams's contributions to American state constitutionalism have extended beyond the realm of scholarship. He has been involved in state constitutional change, serving as coauthor or editor of three volumes designed to guide and assist state constitutional reformers.<sup>11</sup> He has also served as an advocate in state constitutional cases, participating as *amicus curiae* in various human rights cases and offering advice and support to counsel involved in state constitutional litigation. Among his important contributions was an *amicus* brief filed in *Goodridge v. Department of Public Health*, the landmark case in which the Massachusetts Supreme Judicial Court recognized same-sex marriage.<sup>12</sup> In the 2016 Rutgers State Constitutional Law Lecture, Mary Bonauto, the Civil Rights Project Director for GLBTQ Legal Advocates and Defenders as well as the lead counsel in *Goodridge*, noted that she approached Professor Williams about submitting the brief after hearing him speak eloquently about the potentialities of state constitutional

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9. The Massachusetts lecture was published as *Old Constitutions and New Issues: National Lessons from Vermont's State Constitutional Case on Marriage of Same-Sex Couples*, 43 B.C. L. REV. 73, 73 (2001). The Oklahoma lecture was published as *The Brennan Lecture: Interpreting State Constitutions as Unique Legal Documents*, 27 OKLA. CITY L. REV. 189, 189 (2002).

10. Nick Farris, Valerie Aggerbeck, Megan McNevin, & Greg Sisk, *Judicial Impact of Law School Faculties* tbls.2 & 4 (Aug. 18, 2016) (unpublished manuscript) (available at <https://ssrn.com/abstract=2826048>).

11. STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: AGENDA, *supra* note 1; STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: POLITICS, *supra* note 1; FRANK P. GRAD & ROBERT F. WILLIAMS, STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: DRAFTING STATE CONSTITUTIONS, REVISIONS, AND AMENDMENTS (2006).

12. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 948 (Mass. 2003). See Brief for Professors of State Constitutional Law: Robert F. Williams et al. as Amici Curiae Supporting Appellants, *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (No. SJC-08860).

guarantees.<sup>13</sup> She used the occasion of delivering the 2016 State Constitutional Lecture to thank him for his contribution and for “his pioneering and continuing work in lifting up the importance of state constitutions.”<sup>14</sup>

#### SUBNATIONAL CONSTITUTIONAL LAW

If few people were thinking about American state constitutions when Professor Williams began his career, even fewer were paying attention to state constitutions and their analogues in other federal systems. This lack of interest was not confined to the United States. Few jurists or scholars in other federal systems had paid much attention to their subnational constitutions, and none had undertaken comparative research on subnational constitutions. Simply put, thirty years ago the field of subnational constitutional law did not exist. The current vibrancy of the field today owes much to Professor Williams, who both as scholar and as tireless advocate has stressed the importance or potential importance of subnational constitutions.

Over the past thirty years Professor Williams has lectured on state and subnational constitutional law in Argentina, Austria, Brazil, Canada, Mexico, Spain, and South Africa. Often he introduced foreign audiences to developments in American state constitutional law and then used the example of the American experience to encourage jurists and scholars to consider the potential importance of their own subnational constitutions.<sup>15</sup> Professor Williams also successfully championed the creation of a Research Group on Subnational Constitutions in Federal and Quasi-Federal Constitutional States in the prestigious International Association of Constitutional Law.<sup>16</sup> Under his leadership this group has flourished, both in terms of membership and in terms of the quality of research it has generated, enlisting a new generation of scholars in comparative subnational constitutionalism. As faculty supervisor of the Annual Issue on State Constitutional Law of the *Rutgers University Law Review*, he sought out articles on subnational constitutional law and

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13. Mary L. Bonauto, *Equality and the Impossible—State Constitutions and Marriage*, 68 RUTGERS U. L. REV. 1481, 1481–82 (2016).

14. *Id.* at 1481 n.\*.

15. See, e.g., Robert F. Williams, *The New Judicial Federalism in the United States: Expansive State Constitutional Rights Decisions*, in SUBNATIONAL CONSTITUTIONAL GOVERNANCE 67, 67 (1999).

16. Introduction: IACL Research Group on Subnational Constitutions in Federal and Quasi-Federal States, INT’L ASS’N CONST. L. (Nov. 14, 2017), <https://blog-iacl-aicd.org/iacl-news/2018/6/3/introduction-iacl-research-group-on-subnational-constitutions-in-federal-and-quasi-federal-states>.

introduced an American audience to this new field.<sup>17</sup> Finally, Professor Williams's important publications on subnational constitutional law have encouraged and guided comparative research,<sup>18</sup> as well as contributed to scholarship on federalism and provincial constitutions in South Africa.<sup>19</sup>

#### LEGAL EDUCATION

Pre-Williams, no law school paid much attention to state constitutional law. Only rarely was the topic taught, and when it was, professors seldom ventured beyond the law of the state in which the course was offered. Thus there may have been courses on Florida constitutional law or Ohio constitutional law, but none on state constitutional law. But Professor Williams changed that. When he began to teach at Rutgers Law School, he developed a totally new course in state constitutional law, one that was national in scope and comparative in focus. Because there was no casebook that covered that material, he created his own, and anyone who has written a casebook knows how difficult and time-consuming that is. The first edition of his *State Constitutional Law: Cases and Materials* was published by the U.S. Advisory Commission on Intergovernmental Relations in 1988, and later editions were published by commercial publishers, as law schools increasingly recognized the importance of acquainting students with state constitutional law.<sup>20</sup> So too did the Conference of Chief Justices,

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17. Examples include: Arthur B. Gunlicks, *State (Land) Constitutions in Germany*, 31 RUTGERS L.J. 971 (2000); Cheryl Saunders, *The Constitutional Credentials of State Constitutions*, 42 RUTGERS L.J. 853 (2011); G. Alan Tarr, *Subnational Constitutions and Minority Rights: A Perspective on Canadian Provincial Constitutionalism*, 40 RUTGERS L.J. 767 (2009); Christophe Van der Beken, *Subnational Constitutional Autonomy and the Accommodation of Diversity in Ethiopia*, 68 RUTGERS U. L. REV. 1535 (2016); Ronald L. Watts, *Foreword: States, Provinces, Länder, and Cantons: International Variety Among Subnational Constitutions*, 31 RUTGERS L.J. 941 (2000).

18. Professor Williams's contributions to comparative subnational constitutional law include: FEDERALISM, SUBNATIONAL CONSTITUTIONS, AND MINORITY RIGHTS (G. Alan Tarr, Robert F. Williams, & Josef Marko eds., 2004); Robert F. Williams, *Comparative State Constitutional Law: A Research Agenda on Subnational Constitutions in Federal Systems*, in LAW IN MOTION 339 (Roger Blanpain ed., 1997); Robert F. Williams, *Teaching and Researching Comparative Subnational Constitutional Law*, 115 PENN ST. L. REV. 1109 (2011).

19. Professor Williams's writings on South African federalism and provincial constitutionalism include: Robert F. Williams, *Comparative Subnational Constitutional Law: South Africa's Provincial Constitutional Experiments*, 40 S. TEX. L. REV. 625 (1999), reprinted at 63 J. CONTEMP. ROMAN-DUTCH L. 367 (2000); Robert F. Williams & Nico Steytler, *Squeezing Out Provinces' Legislative Competence in Premier: Limpopo Province v. Speaker: Limpopo Provincial Legislature & Others I and II*, 129 S. AFRICAN L.J. 621 (2012).

20. WILLIAMS, *supra* note 7.

which in 2010 unanimously adopted a resolution urging law schools to offer courses in state constitutional law. The Williams text dominated the teaching of state constitutional law for more than two decades, but in 2009, a competing text was published.<sup>21</sup> Oddly enough, its publication underscores the success of the Williams text, as there is now a market for casebooks for courses in state constitutional law.

Professor Williams's contributions to legal education have extended beyond the classroom. Since its inception, he has supervised the annual publication of the State Constitutional Law Issue of the *Rutgers University Law Review*, providing research opportunities for students, particularly through the student-written summaries of state constitutional rulings nationwide. He has also brought his interest in comparative constitutional law to the curriculum at Rutgers Law School, originating a course in South African Constitutional Law that included student research on pending cases before the South African Supreme Court and a class trip to South Africa that included meetings with the Justices of the Court. Students value his commitment to their education—he has twice been named Professor of the Year at Rutgers Law School and received awards from various student groups.

#### INSTITUTION BUILDING

The best scholars leave a legacy after their retirement, found not only in the books and articles they have written but also in the institutions they have created to carry on their work. Certainly this is true of Professor Williams. Consider: Without Professor Williams, there would never have been a Center for State Constitutional Studies—he and I together proposed the idea, and he served initially as the Center's Associate Director and more recently as its Director. Without Professor Williams, that Center would not have forged links with research centers worldwide through the International Association of Centers for Federal Studies (IACFS)—he was a stalwart member of the IACFS and served several years as its Secretary-Treasurer. Without Professor Williams, there would not have been an annual State Constitutional Law Issue of the *Rutgers Law Journal* and, more recently, the *Rutgers University Law Review*—he and Professor Earl Maltz had the idea, and he spearheaded the operation since the initial issue, devoting countless hours to supervising student research for the annual survey of developments in state constitutional law. Finally, without Professor Williams there would be no Rutgers State Constitutional Lecture. His was the idea, his the task

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21. See generally JEFFREY S. SUTTON, RANDY J. HOLLAND, STEPHEN R. MCALLISTER, & JEFFREY M. SHAMAN, *STATE CONSTITUTIONAL LAW: THE MODERN EXPERIENCE* (2009).

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of recruiting renowned scholars to give the lecture, and his the administration of all phases of the enterprise. It is altogether fitting that Rutgers University has recognized his contribution by naming the lecture after him.