

INTRODUCTION

*Robert F. Williams**

This is the Thirty-Fourth Annual State Constitutional Law Issue of our Law Review. We are, of course, in a new era of heightened importance of, and interest in, state law generally and state constitutional law specifically.

This year we were privileged to have Professor Miriam Seifter of the University of Wisconsin School of Law¹ here to deliver the 2024 Robert F. Williams State Constitutional Law Lecture. Her topic is “Democracy and the State Distribution of Powers.”² This builds on her important larger project on Democracy and State Constitutions, often in collaboration with Professor Jessica Bulman-Posen of Columbia Law School.³ Professor Seifter is one of the most important scholars of state constitutional law in our country.

We also have a thoughtful and provocative response to last year’s Lecture by Dr. Nicolas Cole of Oxford University⁴ by Judge Dan Friedman of the Court of Appeals of Maryland.⁵ Judge Friedman is an expert on the Maryland State Constitution.⁶

As always, we have an important group of student-written Case Comments on some of last year’s leading state constitutional law decisions.

* Distinguished Professor of Law Emeritus; Director, Center for State Constitutional Studies.

1. Professor of Law, University of Wisconsin Law School; Co-Director, State Democracy Research Initiative.

2. Miriam Seifter, *Democracy and the State Distribution of Powers*, 76 RUTGERS U. L. REV. 863 (2024).

3. See, e.g., Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859 (2021); Jessica Bulman-Pozen & Miriam Seifter, *Countering the New Election Subversion: The Democracy Principle and the Role of State Courts*, 2022 WIS. L. REV. 1337.

4. Nicholas P. S. Cole, *Foreword: Writing America’s Constitutions: Understanding the Drafting and Re-Drafting of America’s Foundational Texts*, 75 RUTGERS U. L. REV. 1069 (2023).

5. Daniel Friedman, *Miles to Go: A Response to Dr. Nicholas Cole’s Speech at the Third Annual Robert F. Williams Lecture on State Constitutional Law*, 76 RUTGERS U. L. REV. 895 (2024).

6. See, e.g., DAN FRIEDMAN, *THE MARYLAND STATE CONSTITUTION* (2011).

Dan Rodriguez' new book *Good Governing: The Police Power in the American States* has been published by Cambridge University Press. Professor Rodriguez traces the evolution of this fundamental element of state constitutional power as active government grew, including in complex relation to other branches, judicial review, the administrative state, local government and positive rights.

Judge Albert Rosenblatt, formerly of the New York Court of Appeals, has published the coursebook he uses in his class at New York University Law School.⁷

Next year we plan a unique and differently timed Robert F. Williams State Constitutional Law Lecture. In October 2024 the Williams Lecture will be delivered by David Shapiro, Executive Director of the Chicago Lawyers' Committee for Civil Rights.⁸ We will build around it a full-day live conference at the Law School entitled "State Constitutions and the Limits of Criminal Punishments." The conference papers will be delivered by leading experts and together with the Shapiro lecture will constitute next year's Annual Issue on State Constitutional Law.

The use of state constitutional analogs to the Eighth Amendment, as well as unique provisions like the ban on treating incarcerated persons with "undue rigor," are now being invoked in cases where lawyers used to rely only on the federal Eighth Amendment.⁹ Next year's Annual Issue on State Constitutional Law will move this important area of state constitutional litigation and scholarship forward.¹⁰ We intend to continue this important theme on into the 2025 Annual State Constitutional Law Issue, when the Williams Lecture will be delivered by Justice Anita Earls of the North Carolina Supreme Court.¹¹

7. ALBERT M. ROSENBLATT, *STATE CONSTITUTIONAL LAW: RIGHTS AND PROTECTIONS* (Matthew Bender ed., 2024).

8. See David M. Shapiro & Monet Gonnerman, *To the States: Reflections on Jones v. Mississippi*, 135 HARV. L. REV. F. 67 (2021).

9. See Kristen Bell, *A New History of a Forgotten Phrase: Interpreting the "Unnecessary Rigor" Clause in State Constitutions*, 17 TENN. J. L. & POL'Y (forthcoming 2024).

10. See, e.g., Caroline Davidson, *State Constitutions and the Humane Treatment of Arrestees and Pretrial Detainees*, 19 BERKELEY J. CRIM. L. 1 (2014); Gregory S. Schneider, Note, *Sentencing Proportionality in the States*, 54 ARIZ. L. REV. 241 (2012); Marcus Alexander Gadsen, *Constitutionalizing Rehabilitation Did Not Work: Lessons From Indiana and Oregon and a Way Forward*, 54 WILLAMETTE L. REV. 216 (2018); Robert J. Smith, Zoë Robinson & Emily Hughes, *State Constitutionalism and the Crisis of Excessive Punishment*, 108 IOWA L. REV. 537 (2023); Maria Hawilo & Laura Nirider, *Past, Prologue, and Constitutional Limits on Criminal Penalties*, 114 CRIM. L. & CRIMINOLOGY 51 (2024); William W. Berry III, *Excavating Mississippi's Punishment Clause*, MISS. L.J. (forthcoming 2024).

11. See Anita Earls, *Tar Heel Constitutionalism: The New Judicial Federalism in North Carolina*, 133 YALE L.J. F. 855 (2024).

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We are proud to continue our decades-long efforts to raise the understanding of state constitutions and the practice of state constitutional law. They are now more important than ever before.¹²

12. For an excellent journalistic account of the emerging state constitutional arguments about excessive punishment see Eyal Press, *States of Play: Can Advocates Use State Supreme Courts to Preserve—and Perhaps Expand—Constitutional Rights?*, NEW YORKER, June 10, 2024, at 38.

