

**ARKANSAS LAW REVIEW
2016 SYMPOSIUM**

**STATE CONSTITUTIONAL CHANGE:
TRADITIONS, TRENDS,
AND THEORY**



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STATE CONSTITUTIONAL CHANGE: Traditions, Trends, and Theory

The *Arkansas Law Review*, along with Richard Albert, associate professor at Boston College Law School, and Jonathan Marshfield, assistant professor at the University of Arkansas School of Law, present *State Constitutional Change: Traditions, Trends and Theory*. Featuring Vikram Amar, dean of the University of Illinois College of Law, as the keynote speaker, this symposium will explore the distinctive nature of state constitutional change. Panels will address timely topics such as the theory and practice of formal state constitutional amendment, the relationship between formal amendment and judicial interpretation of state constitutions, unconstitutional constitutional amendments in the state tradition and modern state constitutional conventions and commissions. Contributors will focus on the structural, normative and contextual factors that distinguish state constitutions from their federal counterpart and the effects that these differences may have on the nature and significance of state constitutional change.

This symposium will be held from 8:45 a.m.-5:30 p.m. Jan. 22, 2016, at the University of Arkansas School of Law in Fayetteville, Arkansas, in the E.J. Ball Courtroom. The public is welcomed to attend this event, and *Arkansas Law Review* is offering 6.75 hours of Continuing Legal Education credit. Admission is free but registration is requested. Please visit law.uark.edu for more information and updates. Connect with the *Arkansas Law Review* on Twitter @Arklawrev or on Facebook at arklawrev.

Discussions from the symposium will appear
in a forthcoming issue of the *Arkansas Law Review*.

State Constitutional Change

Friday, January 22, 2016

8:45-9:00 a.m. – Welcome Remarks

Dean Stacy Leeds and Professor Jonathan Marshfield

9:00-10:30 a.m. – Panel I

The Modalities of State Constitutional Change

Moderated by Professor Mark Killenbeck

10:30-10:45 a.m. – Break

10:45 a.m.-12:15 p.m. – Panel II

(Re)Designing State Constitutional Amendment Processes

Moderated by Professor Rob Leflar

12:15-1:15 p.m. – Break for Lunch

1:15-2:15 p.m. – Keynote Presentation

State Constitutional Change by Direct Democracy: Modern Challenges and Exciting Opportunities

by Dean Vikram Amar

Introduction by Professor Richard Albert

2:15-3:45 p.m. – Panel III

State Constitutional Change in “Comparative” Perspective

Moderated by Professor Lisa Avalos

3:45-4:00 p.m. – Break

4:00-5:15 p.m. – Panel IV

State Constitutional Change in Arkansas

Moderated by Chief Justice Howard Brill

5:15-5:30 p.m. – Closing Remarks

Arkansas Law Review Executive Committee

State Constitutional Change

Friday, January 22, 2016

Panel I - *The Modalities of State Constitutional Change*

- James A. Gardner, *Practice-Driven Changes to Constitutional Structures of Governance*
- Mark A. Graber, *State Constitutions as National Constitutions*
- Justin R. Long, *Guns, Gays, and Ganja*
- Kate Shaw, *State Administrative Constitutionalism*

Panel II - *(Re)Designing State Constitutional Amendment Processes*

- John Dinan, *21st Century Debates and Developments Regarding the Design of State Amendment Processes*
- Jonathan L. Marshfield, *Improving Amendment*
- Nicholas Stephanopoulos, *Fighting for Fair Representation in Illinois*
- Robert F. Williams, *The Evolving State Constitutional Processes of Adoption, Revision, and Amendment: Looking Forward*

Panel III - *State Constitutional Change in "Comparative" Perspective*

- Richard Albert, *American Exceptionalism in Constitutional Amendment*
- Lawrence Friedman, *The Potentially Unamendable Core of a State Constitution*
- David Landau, *Towards a Theory of Unconstitutional Constitutional Amendments in State Constitutional Law and Comparative Constitutional Law*

Panel IV - *State Constitutional Change in Arkansas*

- Wendell Griffen, Circuit Court Judge
- Jeremy Hutchinson, Arkansas State Senator
- Matthew Shepherd, Arkansas State Representative
- Annabelle Imber Tuck, Retired Arkansas Supreme Court Justice



Vikram David Amar is dean of the University of Illinois College of Law and the Iwan Foundation Professor of Law.

Amar joined Illinois in 2015 from the University of California, Davis School of Law, where he was a professor of law and, since 2008, served as the associate dean for academic affairs. During his seven years as associate dean, Amar was extensively involved in faculty hiring, tenure and promotions; clinical programming; admissions; career services; and curricular development. In addition to teaching at Davis, Amar has been active throughout the University of California System, including serving as a professor of law at the Hastings campus and as a visiting professor of law at the Berkeley and Los Angeles campuses.

Amar is a national authority in constitutional law, federal courts and civil procedure. He has written many books and scores of articles in leading law journals. He is a co-author (along with William Cohen and Jonathan Varat) of *Constitutional Law: Cases and Materials* (Foundation Press, 14th ed. 2013) and a co-author on several volumes of the *Wright & Miller Federal Practice and Procedure Treatise* (West Publishing Co.). He is also the co-author of a one-volume treatise on American Civil Procedure. He writes a biweekly column on constitutional matters for *Verdict*, an online legal analysis and commentary publication by justia.com, is a frequent commentator on local and national radio and television and has penned dozens of op-ed pieces for major newspapers and magazines.

A strong proponent of public and professional engagement, Amar is an elected member of the American Law Institute and has served as a consultant for, among others, the National Association of Attorneys General, United States Department of Justice, California Attorney General's Office, American Civil Liberties Union of Southern California and Center for Civic Education. He chaired the Civil Procedure Section of the Association of American Law Schools for one year.

Amar earned his bachelor's degree from University of California, Berkeley and his juris doctor from Yale Law School, where he was an articles editor for the *Yale Law Journal*. He then clerked for Judge William A. Norris of the United States Court of Appeals for the 9th Circuit and for Justice Harry A. Blackmun of the United States Supreme Court before joining Gibson, Dunn & Crutcher, where he handled a variety of complex civil and white collar criminal matters. Amar appears to be the first person of South Asian heritage to have clerked at the U.S. Supreme Court and the first Indo-American to become dean of a major American law school.



SPEAKERS



Richard Albert is an associate professor and Dean's Research Scholar at Boston College Law School. He is currently a visiting associate professor of law and the Canadian Bicentennial Visiting Associate Professor of Political Science at Yale University. His scholarship focuses on constitutional change, including both formal and informal amendment. He has written about the structure and expressive function of formal amendment rules, the relationship between formal and informal amendment, the concept of amendment by desuetude, the theory and doctrine of unamendability, the phenomenon of constructive unamendability and how unwritten norms change written constitutions. He has recently explained why the Constitution of Canada may be the most difficult to amend in the democratic world and why the United States Constitution contains an unamendable core despite not entrenching any current form of formal unamendability. Albert holds law and political science degrees from Yale University, the University of Oxford and Harvard University.



John Dinan is professor of politics and international relations at Wake Forest University. His research focuses on state constitutionalism, federalism and American political development. He is the author of several books, including *The American State Constitutional Tradition* and *Keeping the People's Liberties: Legislators, Citizens, and Judges as Guardians of Rights*. He has published articles on historical and contemporary aspects of state constitutions and contributes an annual entry on state constitutional developments for *The Book of the States*. He is the editor of *Publius: The Journal of Federalism* and a past chair of the Federalism and Intergovernmental Relations Section of the American Political Science Association. He received a doctorate from the University of Virginia.

SPEAKERS



Lawrence Friedman is a professor of law who teaches constitutional law, information privacy law, national security law and state constitutional law at New England Law. Before joining the faculty in 2004, he was a visiting assistant professor of law at Boston College Law School and a lecturer on law at Harvard Law School. He was an associate with Choate, Hall and Stewart in Boston, focusing on environmental, land use, Internet and government enforcement litigation. He has served on the Boston Bar Association's Task Force on the Future of the Profession and is a former member of the Boston Bar Council. Friedman is a member of the boards of directors of the Robert F. Kennedy Children's Action Corps and the Massachusetts Appleseed Center for Law and Justice. He is the co-editor, with Robert Williams, of *State Constitutional Law: Cases and Materials Fifth Edition* (LexisNexis 2015), and the authored *The New Hampshire State Constitution Second Edition* (Oxford 2015).



James A. Gardner is interim dean, the Bridget and Thomas Black Professor and a Distinguished Professor at the State University of New York, Buffalo Law School, where he teaches in the areas of constitutional, government and election law. Gardner received a bachelor of arts from Yale University and a juris doctor from the University of Chicago. He practiced in the Civil Division of the United States Department of Justice, in Washington, D.C., from 1984-88. He is author of *Election Law in the American Political System* (with Guy-Uriel Charles, Aspen, 2012); *New Frontiers of State Constitutional Law: Dual Enforcement of Norms* (with Jim Rossi, co-ed., Oxford, 2011); and *What are Campaigns For? The Role of Persuasion in Electoral Law and Politics* (Oxford 2009).

SPEAKERS



Mark A. Graber is the Jacob A. France Professor of Constitutionalism at the University of Maryland Francis King Carey School of Law. Unable to say “no” to requests for administrative positions or extra desserts, he has also served as associate chair of the government department at the University of Maryland College Park and associate dean at the law school. Graber is recognized as one of the leading scholars in the country on constitutional law and politics and is

the author of many books and articles on American constitutional law, history, development and politics.



Wendell Griffen is a circuit judge in the Arkansas 6th Judicial Circuit, 5th Division and a pastor at the New Millennium Church in Little Rock. His past experience includes: owner and chief executive officer of cultural competency and inclusion consulting practice, Arkansas appellate judge (Arkansas Court of Appeals), visiting professor of law (University of Arkansas at Little Rock William H. Bowen School of Law), law firm litigation partner (Wright

Lindsey Jennings) and head of state workers compensation agency with a record of proficient performance in oral and written communications, strategic planning and conflict resolution, organizational leadership and workplace diversity instruction and consultation. He received a juris doctor from the University of Arkansas School of Law in 1979.

SPEAKERS



Jeremy Hutchinson is in his second term as Arkansas state senator for District 33, which comprises portions of Pulaski and Saline Counties. He is chairman of the Senate Judiciary Committee and the Joint Budget Claims Subcommittee. He holds a bachelor of business administration in economics from Harding University and a juris doctor from the University of Arkansas at Little Rock William H. Bowen School of Law. Hutchinson works with

legislators across the country as a member of the Southern Legislative Conference and its Energy and Environment Committee, the American Legislative Exchange Council and its Civil Justice Committee, and the National Conference of State Legislatures and its Law and Criminal Justice and Public Policy Committee.



David Landau is the Mason Ladd Professor and associate dean for international programs at Florida State University College of Law. He holds a bachelor of arts, doctorate and juris doctor from Harvard University. He writes primarily about comparative constitutional law, with a focus on Latin America. His recent work has focused on democratic transitions and the potential risks of constitutional amendment and constitution-making for democracy, as well as

judicial activism on socioeconomic rights issues across the developing world. He has published in various journals including the *Harvard International Law Journal*, *International Journal of Constitutional Law*, *UC Davis Law Review*, *Boston College Law Review* and *Alabama Law Review*. In 2011, Landau served as a consultant on constitutional issues for the Truth and Reconciliation Commission of Honduras.

SPEAKERS



Justin R. Long, associate professor of law at Wayne State University, studies state constitutionalism, public education law, urban law and federalism. He is the associate director for education law and policy for the Damon J. Keith Center for Civil Rights and regularly works with civil rights activists in the community. He served as reporter for the Michigan Judicial Selection Task Force, a citizens' commission working to reform Michigan's process for selecting supreme court justices. Before coming to Wayne State, Long was a visiting assistant professor of law at the University of Connecticut School of Law. He practiced as an assistant solicitor general in the New York Office of the Attorney General and clerked for both Myron H. Bright of the United States Court of Appeals for the 8th Circuit and Associate Judge Albert M. Rosenblatt of the New York Court of Appeals. Long earned a bachelor's degree from Harvard University and a juris doctor from the University of Pennsylvania Law School.



Jonathan L. Marshfield is an assistant professor at the University of Arkansas School of Law. His research focuses on state constitutional law and comparative legal systems, with an emphasis on federalism and institutional design. Marshfield's state constitutional law research was recently cited by the New Jersey Supreme Court in an important eminent domain case. His research into South Africa's transition from apartheid to democracy has been cited by leading scholars in various law reviews, textbooks and academic journals. His most recent work is forthcoming in the *Lewis & Clark Law Review*. Marshfield earned a bachelor of arts from Cedarville University, a juris doctor with high honors from Rutgers University School of Law – Camden and a master of laws in legal theory from New York University School of Law.

SPEAKERS



Kate Shaw is an assistant professor at the Benjamin N. Cardozo School of Law and the co-director of the Floersheimer Center for Constitutional Democracy. Her teaching and research interests include constitutional law, legislation, election law, the Supreme Court, antitrust law and state and local government law. Her work has appeared or is forthcoming in the *Columbia Law Review*, *Cornell Law Review*, *Georgetown Law Journal*, *Northwestern*

University Law Review and other publications. Before joining Cardozo, Shaw worked in the White House Counsel's Office as a special assistant to the President and associate counsel to the President. She clerked for Justice John Paul Stevens of the United States Supreme Court and Judge Richard A. Posner of the U.S. Court of Appeals for the 7th Circuit. She graduated with a bachelor of arts, magna cum laude, from Brown University. She earned a juris doctor, magna cum laude and Order of the Coif, from Northwestern University, where she served as the Editor-in-Chief of the *Northwestern University Law Review* and won the John Paul Stevens Award for graduating first in her class.



Matthew J. Shepherd is in his third term as the Arkansas state representative for District 6, which includes parts of Columbia, Ouchita and Union counties. He graduated with a bachelor of arts in history and political science, magna cum laude, from Ouachita Baptist University and received a juris doctor from the University of Arkansas School of Law. For the 90th General Assembly, Shepherd serves as the chairman of the House Judiciary

Committee and is a member of the House Agriculture, Forestry and Economic Development Committee, the Joint Budget Committee and the Public School Desegregation Lawsuit Resolution Task Force. He also serves on the Arkansas Code Revision Commission and was appointed by the Arkansas Supreme Court to its Special Task Force on Practice and Procedure in Civil Cases.

SPEAKERS



Nicholas Stephanopoulos is an assistant professor at The Law School of the University of Chicago. His research and teaching interests include election law, constitutional law, legislation, administrative law, comparative law and local government law. His academic work has appeared in, among others, the *Columbia Law Review*, *Harvard Law Review*, *NYU Law Review*, *University of Chicago Law Review*, *University of Pennsylvania Law Review*, *Virginia Law Review* and *Yale Law Journal*. He often writes about law and politics for popular publications and is involved in several policy reform initiatives. He has been named to the National Law Journal's "Chicago's 40 Under 40."



Annabelle Imber Tuck is a former justice to on the Arkansas Supreme Court and currently serves as the Public Service Fellow and Jurist-in-Residence at the University of Arkansas at Little Rock William H. Bowen School of Law. Her contributions to the bench and bar began in 1977 when she graduated from the University of Arkansas at Little Rock School of Law. She practiced law in Little Rock, eventually becoming a partner in the Wright Lindsey Jennings law firm. In 1984, then Gov. Bill Clinton appointed her to serve as circuit judge for the 5th Division of the 6th Judicial District. Tuck was later elected chancery judge for the 6th Division of the 6th Judicial District, where she served from 1989-96. In 1997, she became the first woman elected to the Supreme Court of Arkansas and retired in 2009. Tuck serves on the Arkansas Judges and Lawyers Assistance Program Foundation Board.

SPEAKERS



Robert F. Williams is a Distinguished Professor who teaches state constitutional law and is associate director of the Center for State Constitutional Studies at Rutgers. He is the author of dozens of articles and many books on state constitutional law. Prior to joining the Rutgers faculty in 1980, Williams served as a legislative assistant during the 1967 Special Constitutional Revision session of the Florida Legislature and represented clients before the

1978 Florida Constitution Revision Commission. He has participated in a wide range of litigation on state constitutional law and has lectured to hundreds of state judges and lawyers on a variety of subjects involved with state constitutional law. He co-produced a television documentary marking the 50th anniversary of the New Jersey Constitution and is the convener of the Research Group on Subnational Constitutions of the International Association of Constitutional Law.

Constitution



MODERATORS



Lisa Avalos is an assistant professor at the University of Arkansas School of Law. She earned a juris doctor from New York University School of Law and holds a bachelor of arts in psychology and a master of arts and doctorate in sociology from Northwestern University. Avalos' research focuses on international human rights with an emphasis on women's human rights, gender-based violence and sexual violence.



Howard Brill is a University Professor and the Vincent Foster Professor of Legal Ethics & Professional Responsibility at the University of Arkansas School of Law where he has been a faculty member since 1975. He teaches professional responsibility, remedies and civil procedure as well as special topics courses on baseball and the law and Arkansas constitutional law. In September 2015, Brill was named Arkansas Supreme Court Chief Justice by Arkansas Gov. Asa Hutchinson . He is on unpaid leave from the university while serving on the court and will return to his faculty duties in January 2017.



Mark Killenbeck is the Wylie H. Davis Distinguished Professor of Law at the University of Arkansas School of Law. He teaches constitutional law, the first amendment and American legal history. He earned a bachelor of arts from Boston College as well as a doctorate and a juris doctor from the University of Nebraska, where he spent 13 years in the university's central administration, ultimately serving as chief of staff for the system president.



Rob Leflar is the Ben J. Altheimer Professor of Legal Advocacy at the University of Arkansas School of Law. His teaching and research focus on torts, health law and related fields. He teaches first-year torts and upper-level courses and seminars in health law and policy, defamation and privacy, products liability and comparative law. He writes on the topics of health law and comparative law, particularly regarding Japan. Leflar earned a bachelor of arts, master of public health and juris doctor from Harvard University.

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