

JAMES A. GARDNER

Bridget and Thomas Black SUNY Distinguished Professor of Law
Research Professor of Political Science
University at Buffalo School of Law
The State University of New York
John Lord O'Brian Hall
Buffalo, NY 14260-1100

Voice: (716) 645-3607, Fax: (716) 645-5968, E-mail: jgard@buffalo.edu

ACADEMIC APPOINTMENTS

2001-present **University at Buffalo School of Law, The State University of New York**

- Research Professor of Political Science (by courtesy) (since 2019)
- Member, University at Buffalo Center for Information Integrity (since 2021)
- Director, Edwin F. Jaeckle Center for Law, Democracy, and Governance (since 2018 and 2005-2014)
- Interim Dean (Dec. 2014 through June 2017)
- Bridget and Thomas Black Professor (since 2013)
- SUNY Distinguished Professor (since 2011)
- Vice Dean for Academic Affairs (2007-2012)
- Joseph W. Belluck and Laura L. Aswad Professor of Civil Justice (2005-2013)
- Professor of Law (since 2001)

Spring, 2018 **University of Barcelona, Faculty of Law, Barcelona, Spain**
Visiting Professor

February 2015 **European Academy, Institute for Comparative Federalism, Bolzano, Italy**
Federalism Scholar in Residence

Spring, 2013 **Florida State University College of Law**
Visiting Professor of Law

Fall, 2012 **McGill University, Montreal, Canada**
Fulbright Visiting Research Chair in the Theory and Practice of Constitutionalism and Federalism

Spring, 2001 **University of Connecticut School of Law**
Visiting Professor of Law

Fall, 1994 **College of William & Mary, Marshall-Wythe School of Law**
Visiting Professor of Law

1988-2001 **Western New England College School of Law, Springfield, Massachusetts**
Professor of Law; Associate Professor, 1991-1993; Assistant Professor, 1988-1991

HONORS AND AWARDS

2017	Jaekle Award (Law School's highest honor, awarded by Law Alumni Association)
2015	Inducted into National Academy of Law of Córdoba, Argentina, as Académico Correspondiente
2014	Selected Federalism Scholar in Residence, European Academy, Institute for Comparative Federalism
2013	Named Bridget and Thomas Black Professor
2012	Appointed Fulbright Canada Visiting Research Chair
2011	Appointed SUNY Distinguished Professor
2010	UB Exceptional Scholar Award for Sustained Achievement
2005	Named Joseph W. Belluck and Laura L. Aswad Professor of Civil Justice (through 2013)
2004	Named William J. Magavern Faculty Scholar (through 2005)
2004	UB Class of 2004 Faculty Award (commencement award for teaching)
1991	Student Bar Association Professor of the Year (commencement award for teaching)

EDUCATION

University of Chicago Law School, J.D. 1984

University of Chicago Law Review; Vice President, Chicago Law Foundation

Yale University, B.A. 1980

Magna cum laude, with Distinction in the Major (Economics & Political Science)

TEACHING PROFILE

Constitutional Law, Election Law, Introduction to the American Legal System (undergraduate), Civil Procedure, State Constitutional Law. Less recently: State and Local Government Law, Litigation Practice, Administrative Law, Evidence, First Amendment Rights

PUBLICATIONS

SSRN author page: <http://ssrn.com/author=40126>

Books

ELECTION LAW IN THE AMERICAN POLITICAL SYSTEM (with Guy-Uriel Charles) (Aspen, 3d ed. 2023) (2d ed. 2018) (1st ed. 2012) (includes annual Supplement, 160-page Teacher's Manual, and online support platform)

COMPARATIVE ELECTION LAW (Edward Elgar 2022) (edited volume)

LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY (3rd ed.) (Carolina Academic Press, 2020) (with Christine Bartholomew). Second edition, LexisNexis 2007; first edition, Michie, 1993 (sole author on first and second editions).

NEW FRONTIERS OF STATE CONSTITUTIONAL LAW: DUAL ENFORCEMENT OF NORMS (with Jim Rossi, co-eds.) (Oxford University Press 2011)

WHAT ARE CAMPAIGNS FOR? THE ROLE OF PERSUASION IN ELECTORAL LAW AND POLITICS (Oxford University Press 2009)

INTERPRETING STATE CONSTITUTIONS: A JURISPRUDENCE OF FUNCTION IN A FEDERAL SYSTEM (University of Chicago Press 2005)

STATE EXPANSION OF FEDERAL CONSTITUTIONAL LIBERTIES: INDIVIDUAL RIGHTS IN A DUAL CONSTITUTIONAL SYSTEM (Editor, 2 Vols. with introduction) (Garland 1999)

Book Chapters

Election Law and Democratic Theory, in OXFORD HANDBOOK OF AMERICAN ELECTION LAW (Eugene R. Mazo, ed.) (Oxford University Press, forthcoming 2024)

Equilibrium and Sustainability in Federal Systems, in HANDBOOK OF FEDERATIONS AND FEDERAL STUDIES (César Colino, ed.) (Edward Elgar, forthcoming 2024)

How Federal Systems Endure: Dynamic Equilibrium and Its Challenges, in THE LAW AND POLITICS OF FEDERALISM (Erin F. Delaney, ed.) (Edward Elgar, forthcoming 2024)

Strongmen and Neurotics: Visible Struggle and the Construction of Judicial Ethos, in JUSTICE ANTHONY M. KENNEDY: THE RHETORIC OF LIBERTY (David Frank and Francis J. Mootz, III, eds.) (Pennsylvania State University Press 2023)

El Misterioso Éxito de una Democracia Federal, in DECISIÓN DEMOCRÁTICA Y FORMA CONSTITUCIONAL (Pablo C. Riberi and Pedro Salazar, eds.) (Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, 2022)

Electoral Systems and Conceptions of Politics, in COMPARATIVE ELECTION LAW (James A. Gardner, ed.) (Edward Elgar 2022), pp. 140-157

Introduction: Election Law – Universal or Particular?, in COMPARATIVE ELECTION LAW (James A. Gardner, ed.) (Edward Elgar 2022), pp. 2-13

Principios de la libertad de expresión en los Estados Unidos, in UNA PERSPECTIVA GLOBAL DE DERECHO PENAL (Dulce Maria Santana Vega, et al., eds.) (Atelier 2022), pp. 781-792

Subnational Constitutionalism in the United States, in HANDBOOK OF SUBNATIONAL CONSTITUTIONS AND CONSTITUTIONALISM (Patricia Popelier, Giacomo Delladone, and Nicholas Aroney, eds.) (Routledge 2021), pp. 294-309

Presidential Selection: Historical, Institutional, and Democratic Perspectives, in THE BEST CANDIDATE: PRESIDENTIAL NOMINATION IN POLARIZED TIMES (Eugene Mazo and Michael Dimino, eds., Cambridge University Press) (2020), pp. 10-35

Dual Enforcement of Constitutional Norms (with Jim Rossi), in NEW FRONTIERS OF STATE CONSTITUTIONAL LAW: DUAL ENFORCEMENT OF NORMS (James A. Gardner and Jim Rossi, eds.) (Oxford University Press 2011)

Voting and Elections, in STATE CONSTITUTIONS FOR THE 21ST CENTURY: THE AGENDA OF STATE CONSTITUTIONAL REFORM (G. Alan Tarr and Robert F. Williams, eds.) (SUNY Press 2006)

Power, Autonomy, and Politics under Local Government Charters in the United States, in LOCAL GOVERNMENT CHARTERS: EUROPEAN AND AMERICAN REGULATIONS (Wieslaw Kisiel, et al., eds.) (Krakow, Poland: Zakamycze 2005)

Federalism and the Problem of Political Subcommunities, in TO PROMOTE THE GENERAL WELFARE: A COMMUNITARIAN LEGAL READER (David E. Carney, ed.) (Lexington Books 1999)

Articles

New Challenges to Judicial Federalism, 112 KENTUCKY LAW JOURNAL ____ (forthcoming 2024)

Waiting for Virtue: Comments on Schlegel's Waiting for Rain, 71 BUFFALO LAW REVIEW ____ (forthcoming 2024)

Dividing the Body Politic, 2023 UNIVERSITY OF CHICAGO LEGAL FORUM __ (forthcoming 2024)

Why Law Isn't Jazz: A Response, 71 BUFFALO LAW REVIEW: THE DOCKET D1-D16 (2023) (response to William W. Buzbee, *Jazz Improvisation and the Law*, 2023 ILL. L. REV. 151), https://digitalcommons.law.buffalo.edu/the_docket/10/

Federalism and the Limits of Subnational Political Heterogeneity, 2021 WISCONSIN LAW REVIEW 1097-1140

The Illiberalization of American Election Law: A Study in Democratic Deconsolidation, 90 FORDHAM LAW REVIEW 423-465 (2021)

Illiberalism and Authoritarianism in the American States, 70 AMERICAN UNIVERSITY LAW REVIEW 829-912 (2021)

Transmission of Mastery, 69 BUFFALO LAW REVIEW 55-85 (2021)

Lessons from a Journey through State Subnational Constitutional Law, 72 RUTGERS UNIVERSITY LAW REVIEW 1187-1190 (2020)

Democratic Legitimacy under Conditions of Severely Depressed Voter Turnout, 87 UNIVERSITY OF CHICAGO LAW REVIEW ONLINE 24-34 (June 26, 2020),
<https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-gardner/>

The Theory and Practice of Contestatory Federalism, 60 WILLIAM & MARY LAW REVIEW 507-588 (2018)

Active Judicial Governance, 51 NEW ENGLAND LAW REVIEW 545-554 (2018)

Canadian Federalism in Design and Practice: The Mechanics of a Permanently Provisional Constitution, 9(3) PERSPECTIVES ON FEDERALISM 1-30 (2017) (peer reviewed)

Claims of Distinctive Identity in Federal Systems: Judicial Policing of the Limits of Subnational Variance, 14 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 378-410 (2016) (with Antoni Abat I Ninet) (peer reviewed)

Translated into Russian and reprinted, in two parts, as *Trebovaniya priznaniya samobytnosti v federativnoiy sisteme: sudebnyi nadzor za regional'noiy svobodoy*; SRAVNITEL'NOE KONSTITUTIONNOE OBOZRENIE (2017), 4:69–91; and 5:48–56.

Practice-Driven Changes to Constitutional Structures of Governance, 68 ARKANSAS LAW REVIEW 335-369 (2016)

Justice Brennan and the Foundations of Human Rights Federalism, 77 OHIO STATE LAW JOURNAL 355-385 (2016)

La contienda intergubernamental en sistemas federados, 28 CUADERNO DE FEDERALISMO 123-140 (2015) (yearbook of the National Academy of Law and Social Sciences of Córdoba, Argentina, Federalism Institute)

Partitioning and Rights: The Supreme Court's Accidental Jurisprudence of Political Representation, 42 FLORIDA STATE UNIVERSITY LAW REVIEW 61 (2015)

Autonomy and Isomorphism: The Unfulfilled Promise of Structural Autonomy in American State Constitutions, 60 WAYNE LAW REVIEW 31 (2014)

Federalism and Subnational Political Community, 127 HARVARD LAW REVIEW FORUM 153 (2014)

The Incompatible Treatment of Majorities in Election Law and Deliberative Democracy, 12 ELECTION LAW JOURNAL 468 (2013) (peer-reviewed)

The Myth of State Autonomy: Federalism, Political Parties, and the National Colonization of State Politics, 29 JOURNAL OF LAW AND POLITICS 1 (2013)

How to Do Things with Boundaries: Redistricting and the Construction of Politics, 11 ELECTION LAW JOURNAL 399 (2012) (peer-reviewed)

Election Law as Applied Democratic Theory, 56 ST. LOUIS UNIVERSITY LAW JOURNAL 689 (2012)

Sustainable Decentralization: Power, Extraconstitutional Influence, and Subnational Symmetry in the United States and Spain (with Antoni Abad I Ninet), 59 AMERICAN JOURNAL OF COMPARATIVE LAW 491 (2011) (peer-reviewed)

Anonymity and Democratic Citizenship, 19 WILLIAM & MARY BILL OF RIGHTS JOURNAL 927 (2011)

Anti-Regulatory Absolutism in the Campaign Speech Arena: Citizens United and the Implied Slippery Slope 20 CORNELL JOURNAL OF LAW AND PUBLIC POLICY 673 (2011)

New York's Inbred Judiciary: Pathologies of Nomination and Appointment of Court of Appeals Judges, 58 BUFFALO LAW REVIEW: THE DOCKET 15 (2010)

The Dignity of Voters – A Dissent, 63 UNIVERSITY OF MIAMI LAW REVIEW 435 (2010)

In Search of Sub-National Constitutionalism, 4 EUROPEAN CONSTITUTIONAL LAW REVIEW 325-343 (2008) (peer-reviewed).

Translated into Portuguese and reprinted as *Em busca do constitucionalismo infranacional*, in FEDERALISMO E CONSTITUIÇÃO: ESTUDOS COMPARADOS (Antonio Moreira Maués, ed.) (Rio De Janeiro: Lumen Juris 2012)

What Is "Fair" Partisan Representation and How Can It Be Constitutionalized? The Case for Fixed Election Districts, 90 MARQUETTE LAW REVIEW 555 (2007)

Deliberation or Tabulation? The Self-Undermining Constitutional Architecture of Election Campaigns, 54 BUFFALO LAW REVIEW 1413 (2007)

Representation without Party: Lessons from State Constitutional Attempts to Control Gerrymandering, 37 RUTGERS LAW JOURNAL 881 (2006) (2005 State Constitutional Lecture, Rutgers-Camden Center for State Constitutional Studies)

Giving the Gift of Public Office, 53 BUFFALO LAW REVIEW 859 (2005)

Democracy Without a Net? Separation of Powers and the Idea of Self-Sustaining Constitutional Constraints on Undemocratic Behavior, 79 ST. JOHN'S LAW REVIEW 293 (2005), reprinted in SEPARATION OF POWERS: U.S. PERSPECTIVES (Hyderabad, India: Amicus Books, 2009)

The New Frontier of State Constitutional Law (with Jim Rossi), 46 WILLIAM & MARY LAW REVIEW 1231 (2005) (Symposium foreword)

Whose Constitution Is It? Why Federalism and Constitutional Positivism Don't Mix, 46 WILLIAM & MARY LAW REVIEW 1245 (2005), reprinted in NEW FRONTIERS OF STATE CONSTITUTIONAL LAW: DUAL ENFORCEMENT OF NORMS (with Jim Rossi, co-eds.) (Oxford University Press 2011)

A Post-Vieth Strategy for Litigating Partisan Gerrymandering Claims, 3 ELECTION LAW JOURNAL 643 (2004) (peer-reviewed)

State Courts as Agents of Federalism: Power and Interpretation in State Constitutional Law, 44 WILLIAM & MARY LAW REVIEW 1725 (2003)

State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions, 91 GEORGETOWN LAW JOURNAL 1003 (2003)

Coherence or Bust: Telling Tales about Election Law, 36 CONNECTICUT LAW REVIEW 1 (2003) (reply to articles by Neuborne, Paul, Persily, and Pildes responding to my previous commentary)

Forcing States to Be Free: The Emerging Constitutional Guarantee of Radical Democracy, 35 CONNECTICUT LAW REVIEW 1467 (2003) (featured commentary for annual commentary issue, with responses by Neuborne, Paul, Persily, and Pildes)

One-Person, One-Vote and the Possibility of Political Community, 80 NORTH CAROLINA LAW REVIEW 1237 (2002)

Neutralizing the Incompetent Voter: A Comment on Cook v. Gralike, 1 ELECTION LAW JOURNAL 49 (2001) (peer-reviewed)

The Regulatory Role of State Constitutional Structural Constraints in Presidential Elections, 29 FLORIDA STATE UNIVERSITY LAW REVIEW 625 (2001)

Can Party Politics Be Virtuous?, 100 COLUMBIA LAW REVIEW 667 (2000)

Madison's Hope: Virtue, Self-Interest, and the Design of Electoral Systems, 86 IOWA LAW REVIEW 87 (2000)

Devolution and the Paradox of Democratic Unresponsiveness, 40 SOUTH TEXAS LAW REVIEW 759 (1999); reprinted in *COMPARATIVE FEDERALISM IN THE DEVOLUTION ERA* (Neil C. McCabe, ed.) (Lexington Books 2002)

Stop Me Before I Quantify Again: The Role of Political Science in the Study of Election Law, 32 LOYOLA OF LOS ANGELES LAW REVIEW 1141 (1999)

The Nature of the American Constitution: Is There a Constitutional Right to Vote and Be Represented?, 48 AMERICAN UNIVERSITY LAW REVIEW 605 (1999) (with Rosen, Peller, Still, and Wright)

Southern Character, Confederate Nationalism, and the Interpretation of State Constitutions: A Case Study in Constitutional Argument, 76 TEXAS LAW REVIEW 1219 (1998)

The Positivist Revolution That Wasn't: Constitutional Universalism in the States, 4 ROGER WILLIAMS UNIVERSITY LAW REVIEW 109 (1998)

Section 98 and the Specialized Practice of Civil Rights Law, 20 WESTERN NEW ENGLAND LAW REVIEW 39 (1998)

Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote, 145 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 893 (1997)

My Aching Heart, 59 ALBANY LAW REVIEW 1723 (1996)

Shut Up and Vote: A Critique of Deliberative Democracy and the Life of Talk, 63 TENNESSEE LAW REVIEW 421 (1996)

The "States-as-Laboratories" Metaphor in State Constitutional Law, 30 VALPARAISO UNIVERSITY LAW REVIEW 475 (1996)

The Court and the Changing Constitution: A Discussion, 13 TOURO LAW REVIEW 135 (1996) (with Swidorski, Latzer and Galie)

The More Things Change . . . : Superficial State Constitutional Analysis at the New York Court of Appeals, 12 TOURO LAW REVIEW 709 (1996)

The Ambiguity of Legal Dreams: A Communitarian Defense of Judicial Restraint, 71 NORTH CAROLINA LAW REVIEW 805 (1993)

What is a State Constitution?, 24 RUTGERS LAW JOURNAL 1025 (1993) (reply in seven-article Roundtable devoted to my work on state constitutional law)

Discourse and Difference -- A Reply to Parness and Cogan, 5 ST. THOMAS LAW REVIEW 193 (1992)

The Failed Discourse of State Constitutionalism, 90 MICHIGAN LAW REVIEW 761 (1992)

The Uses and Abuses of Incumbency: People v. Ohrenstein and the Limits of Inherent Legislative Power, 60 FORDHAM LAW REVIEW 217 (1991)

The Positivist Foundations of Originalism: An Account and Critique, 71 BOSTON UNIVERSITY LAW REVIEW 1 (1991)

Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution, 52 UNIVERSITY OF PITTSBURGH LAW REVIEW 189 (1990)

Comment: Protecting the Rationality of Electoral Outcomes: A Challenge to First Amendment Doctrine, 51 U. CHI. L. REV. 892 (1984)

Book Reviews and Review Essays

Can Liberal Constitutionalism Survive the Rise of the Megacity?, 47 LAW AND SOCIAL INQUIRY 1055-1060 (2022) (reviewing RAN HIRSCHL, CITY, STATE: CONSTITUTIONALISM AND THE MEGACITY (Oxford 2020))

Book Review, 48 PUBLIUS: THE JOURNAL OF FEDERALISM (No. 3: June, 2018) (reviewing COMPARATIVE FEDERALISM: CONSTITUTIONAL ARRANGEMENTS AND CASE LAW, by Francesco Palermo and Karl Kössler (2017)), <https://doi.org/10.1093/publius/pjy015>

Book Review, 24 LAW AND POLITICS BOOK REVIEW 186-189 (No. 4: April, 2014) (reviewing FEDERAL DYNAMICS: CONTINUITY, CHANGE, AND THE VARIETIES OF FEDERALISM (Arthur Benz and Jörg Broschek, eds., 2013)), <http://www.lpbr.net/2014/04/federal-dynamics-continuity-change-and.html>.

Book Review, PUBLIUS: THE JOURNAL OF FEDERALISM doi: 10.1093/publius/pjt036 (2013) (reviewing CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS: SUB-NATIONAL PERSPECTIVES, edited by Michael Burgess and G. Alan Tarr (2012)), <http://publius.oxfordjournals.org/content/early/2013/08/31/publius.pjt036.full>

Book Review, 22 LAW AND POLITICS BOOK REVIEW 327-332 (No. 7: July 2012) (reviewing MICHAEL S. GREVE, THE UPSIDE-DOWN CONSTITUTION (2012)), <http://www.lpbr.net/2012/07/upside-down-constitution.html>.

Book Review, 19 LAW AND POLITICS BOOK REVIEW 668-672 (No. 9: Sept. 22, 2009) (reviewing JENNA BEDNAR, THE ROBUST FEDERATION: PRINCIPLES OF DESIGN (2008)), <http://www.lawcourts.org/LPBR/reviews/bednar0909.htm>.

Book Review, 18 LAW AND POLITICS BOOK REVIEW 762-764 (No. 9: September, 2008) (reviewing LAWRENCE M. FRIEDMAN, *GUARDING LIFE'S DARK SECRETS: LEGAL AND SOCIAL CONTROLS OVER REPUTATION, PROPRIETY, AND PRIVACY* (2007)), <http://www.lawcourts.org/LPBR/reviews/friedman0908.htm>.

Book Review, 17 LAW AND POLITICS BOOK REVIEW 620-623 (No. 7: July, 2007) (reviewing CHRISTOPHER F. ZURN, *DELIBERATIVE DEMOCRACY AND THE INSTITUTIONS OF JUDICIAL REVIEW* (2007)), <http://www.lpbr.net/2007/07/deliberative-democracy-and-institutions.html>.

Wandering Lonely as a Cloud: National Citizenship and the Case for Non-Territorial Election Districts, 5 ELECTION LAW JOURNAL 210 (2006) (reviewing Andrew Rehfeld, *THE CONCEPT OF CONSTITUENCY: POLITICAL REPRESENTATION, DEMOCRATIC LEGITIMACY, AND INSTITUTIONAL DESIGN*, Cambridge University Press 2005), <http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2006.5.210>.

Other Writings

Is Arizona a Liberal Democracy?, Constitutional Conversations; Arizona State University, Center for Constitutional Design (Dec. 9, 2022), https://constitutionalconversations.substack.com/p/is-arizona-a-liberal-democracy?utm_source=post-email-title&publication_id=1105265&post_id=89447961&isFreemail=true&utm_medium=email

Authoritarianism in Federal States, Samuel Cohn: Social Trends (Dec. 5, 2022), <https://www.samuelcohn.net/current-affairs-1/james-gardner-on-anti-democracy-in-us-states-and-why-it-matters>

Can Federalism Protect Subnational Units from National Authoritarianism?, EURAC Research, Eureka Blog (Nov. 15, 2022), <https://www.eurac.edu/en/blogs/eureka/can-federalism-protect-subnational-units-from-national-authoritarianism>

Domestic Disinformation Threat is Growing and Aims to Undermine U.S. Institutions, DefenseOpinion (Oct. 23, 2022), <https://defenseopinion.com/domestic-disinformation-threat-is-growing-and-aims-to-undermine-u-s-institutions/273/>

The GOP's Maxim: For My Friends, Everything – For My Enemies, Election Law, RealClear Policy (Sept. 28, 2021), https://www.realclearpolicy.com/articles/2021/09/23/the_gops_maxim_for_my_friends_everything_for_my_enemies_election_law_795549.html

Only Federal Regulation Can Ensure Fair Elections, The Regulatory Review (Sept. 28, 2021), <https://www.theregreview.org/2021/09/28/gardner-regulation-fair-elections/>

Is Democracy Possible Here?, Baldy Center Blog, The Baldy Center for Law and Social Policy, March 15, 2021, at: <http://www.buffalo.edu/baldycenter/multimedia/blog.html#gardner>

Symposium on the Legacies of Trumpism and Constitutional Democracy in the United States — Decentralization and Resistance to Authoritarianism, International Journal of Constitutional Law Blog, Jan. 22, 2021, at: <http://www.iconnectblog.com/2021/01/symposium-on-the-legacies-of-trumpism-and-constitutional-democracy-in-the-united-states-part-iii-decentralization-and-resistance-to-authoritarianism/>

The Future of American Liberal Democracy, Election Law Blog (Nov. 8, 2020), <https://electionlawblog.org/?p=118365>

Democracy or Authoritarianism?, Election Law Blog (Nov. 1, 2020), <https://electionlawblog.org/?p=117930>

An Interview with James Gardner: Transmission of Mastery, Education News (Apr. 14, 2020) (conducted by Michael F. Shaughnessy), <https://www.educationviews.org/an-interview-with-james-gardner-transmission-of-mastery/>

Federalism Complicates the Analysis as a State Court Opens a Second Front in the Struggle Against Gerrymandering, Election Law Blog (Feb. 9, 2018); <http://electionlawblog.org/?p=97403>

The Fourteenth Amendment: Transforming American Democracy, Law Links, May 2017, <http://www.law.buffalo.edu/links/2017-May/news-law-day.html>

Guest Blogger, The Faculty Lounge, www.thefacultylounge.org, July 2012 (six posts)

Gov. Cuomo Should Veto the Maps, NEWSDAY, February 24, 2012

Rioting in the Suburbs, ARTVOICE 9:8, February 25, 2010, https://artvoice.com/issues/v9n8/rioting_in_the_suburbs.html

Sizing up the Legislature, Policy Brief, University at Buffalo Regional Institute (September, 2009) (with Kathryn A. Foster)

New York's Judicial Selection Process is Fine – It's the Party System That Needs Fixing, 79 NEW YORK STATE BAR JOURNAL 42 (No. 7: September 2007)

Weighty Judgment: New York's Judicial Selection Process is Tainted by Politics, Not Process, Albany Times-Union, Opinion page, March 25, 2007

State Constitutional Distinctions, in *ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES* (Routledge 2006)

Elections, in *FEDERALISM IN AMERICA: AN ENCYCLOPEDIA* (Greenwood Press 2006)

Who's Watching Out for Our Liberty?, The Buffalo News, p. I-1, Oct. 9, 2005

Structuring the Political Process under American State Constitutions (2004); Rutgers Center for State Constitutional Studies, <http://camlaw.rutgers.edu/statecon/subpapers/gardner.pdf>.; and at Federalismi.it, <http://www.federalismi.it>

Making Claims under the State Constitution, Erie County Bar Association Bulletin (November 2002)

Works in Progress

My Right to Dominate You: The Populist Perversion of Human Rights

Authoritarianism in Federal States (book chapter for forthcoming volume)

PROFESSIONAL EXPERIENCE

2002-present	Election Law Consulting Consulting on various legal matters relating to elections, including counseling and litigation concerning redistricting, voting rights, campaign finance, and other issues, for candidates, political parties, government agencies and officials, public interest organizations, and private individuals.
1992-1996	New York Civil Liberties Union Cooperating Attorney Represented plaintiffs in civil rights cases in federal and state court; provided counsel to NYCLU's Albany, NY, chapter.
1984-1988	United States Department of Justice, Civil Division , Washington, D.C. Trial Attorney Extensive experience in all aspects of federal civil litigation, including pleadings, motions, written and oral discovery, arguments, settlement, trials, and appeals.
1980-1981	United States Department of Commerce , Washington, D.C. Economist Economic research relating to domestic economic policy in Office of Policy (1980) and Bureau of Industrial Economics (1981).

SELECTED PRESENTATIONS AND APPEARANCES

“New Challenges to Judicial Federalism”; Conference on State Supreme Courts and the Great American Experiment: Honoring the Legacy of Chief Justice John D. Minton, Jr.; University of Kentucky College of Law; Lexington, Kentucky; October 13, 2023

“Electoral Systems and the Goals of Representation”; Conference on Race and Representation; Charles Hamilton Houston Institute for Race and Justice; Harvard Law School; Cambridge, Massachusetts; September 22, 2023

Moderator and commentator; Conference on Misinformation in Social Media and What To Do About It; University at Buffalo Center for Information Integrity; Buffalo, N.Y.; April 21, 2023

“Interpreting State Constitutions in a Federal System”; New York State Judicial Institute; White Plains, N.Y.; April 12, 2023

Keynote Address: “Dividing the Body Politic”; Conference on Borders and Boundaries; University of Chicago Law School; Chicago, Illinois; November 4, 2022

“Authoritarianism in Federal States”; Workshop on The State of Democracy and Rise of Autocracy; Baldy Center for Law and Social Policy; University at Buffalo, State University of New York; Buffalo, N.Y.; October 28-29, 2022

“Is Arizona a Liberal Democracy?”; Conference on Elections and Federalism; Arizona State University College of Law; Phoenix, Arizona; October 7-8, 2022

“Election Law and Democratic Theory”; Workshop on Oxford Handbook of American Election Law; Southeastern Association of Law Schools Annual Conference; Destin, Florida; August 1-2, 2022

“Strongmen and Neurotics: Visible Struggle and the Construction of Judicial *Ethos*”; Annual Meeting, Association for the Study of Law, Culture, and Humanities; Emory Law School; Atlanta, Georgia; June 16, 2022

“How Federal Systems Endure: Dynamic Equilibrium and Its Challenges”; Workshop: The Law and Politics of Federalism; Montpelier, Virginia; Apr. 29-May 1, 2022

“Rethinking Civil Society”; Kick-Off Symposium; Center for Information Integrity; University at Buffalo; Buffalo, NY (via Zoom); Jan. 21, 2022

“The Concept of ‘Equilibrium’ in Federal Constitutions”; Conference on The Law and Politics of Federalism; Northwestern University School of Law; Chicago, Ill. (via Zoom); October 14, 2021

“Federalism and the Limits of Subnational Political Heterogeneity”; Conference on Public Law in the States; University of Wisconsin Law School; Madison, Wis. (via Zoom), June 23, 2021

“Federalism and the Limits of Subnational Political Heterogeneity”; Panel: A Small-d Democratic Transition in the United States? The Biden Presidency and the Legacies of Trumpism; Law and Society Annual Meeting; Chicago, Ill. (via Zoom); May 28, 2021

“Strongmen and Neurotics: Visible Struggle and the Construction of Judicial *Ethos*”; Symposium: Justice Anthony M. Kennedy: The Rhetoric of Liberty; McGeorge Law School; Sacramento, Cal.; March 12, 2021 (via Zoom)

“U.S. Law of Presidential Elections”; Peking University School of Transnational Law; Shenzhen, China; November 19, 2020 (via Zoom)

“Is Iowa a Liberal Democracy?”; Judge James Grant Iowa Constitution Lecture, Drake University Law School; Des Moines, Iowa; October 29, 2020 (via Zoom)

“The Puzzling Success of ‘Federal Democracy’”; Drake University Law School; Des Moines, Iowa; October 29, 2020 (via Zoom)

“Lessons from a Journey through Subnational Constitutional Law”; Festschrift honoring Professor Robert F. Williams; Rutgers University Law School; Camden, N.J.; March 5, 2020

“The Concept of ‘Equilibrium’ in Federal Constitutions”; Conference on Constitutional Principle or Political Process? The Future of Federalism in Comparative Perspective; Second European Constitutional Law “Schmooze”; University of Milan; Milan, Italy; October 25-26, 2019

“Asymmetric Federalism”; Conference on Public Law in Times of Change; International Society of Public Law (ICON•S); Santiago, Chile; July 3, 2019

“Conceptions of Politics in Comparative Perspective”; Conference on Public Law in Times of Change; International Society of Public Law (ICON•S); Santiago, Chile; July 2, 2019

Commentator, Culp Colloquium; Duke University Law School; Durham, North Carolina; May 15, 2019

Panelist, Roundtable on The First Tradition of Rights in America: State Constitutional Declarations of Rights, 1776-1791; New York State Political Science Association, Annual Meeting; Wagner College; Staten Island, New York; April 13, 2019

“The Theory and Practice of Contestatory Federalism”; University of Washington Law School; Seattle, Washington; October 18, 2018

“Contestatory Federalism: How States (and Provinces, Cantons, and *Länder*) Get Their Way with Central Governments”; Multistate Tax Commission Annual Conference; Boston, Massachusetts; July 25, 2018

Participant, Roundtable on Partisan Gerrymandering: Perspectives on District Drawing in a Polarized Era; Law & Society Association Annual Meeting; Toronto, Canada; June 9, 2018

“Principles of Free Speech in the United States”; Seminario Internacional: Responsabilidad penal de la persona jurídica y libertad de expresión; University of Barcelona; Barcelona, Spain; April 17, 2018

“Conceptions of Politics in Comparative Perspective”; Association of American Law Schools, Annual Meeting; San Diego, California; January 4, 2018

“The Puzzling Success of ‘Federal Democracy’”; Conference on Decisión democrática y forma constitucional; Congreso Internacional de Teoría Constitucional; Córdoba, Argentina; September 7, 2017

“Methods and Patterns of Subnational Contestation in Federal States”; American Political Science Association Annual Meeting; San Francisco, California; September 2, 2017

“Controlling Majority Faction, 2.0”; Southeastern Association of Law Schools; Boca Raton, Florida; August 3, 2017

“Comments on Palermo and Kössler, *Comparative Federalism*”; Conference on Courts, Power, Public Law; International Society of Public Law (ICON•S); Copenhagen, Denmark; July 5, 2017

“Canadian Federalism in Design and Practice: The Mechanics of a Permanently Provisional Constitution”; Symposium on the Constitution of Canada: History, Evolution, Influence and Reform; Scuola Sant’Anna; Pisa, Italy; May 24, 2017

“The Fourteenth Amendment: Transforming American Democracy”; Keynote Address, Law Day; Bar Association of Erie County; Buffalo, NY; April 21, 2017

“Justice Brennan and the Foundations of Human Rights Federalism”; Federalist Society Annual Western Chapters Conference; Simi Valley, California; January 28, 2017

“Practice-driven Changes to Constitutional Structures of Governance”; University of Arkansas; Fayetteville, Arkansas; January 22, 2016

“Intergovernmental Contestation in Federal Systems”; Induction Lecture; National Academy of Law of Córdoba; Córdoba, Argentina; August 11, 2015

“Sustainable Decentralization: The Cases of the United States and Spain”; Catholic University of Córdoba; Córdoba, Argentina; August 10, 2015

“Distinctive Identity Claims in Federal Systems: Judicial Policing of Subnational Variance”; University of San Andrés; Buenos Aires, Argentina; August 7, 2015

“The Constraints of Federal Constitutional Design: Practice and Constitutional Change in the United States and Canada”; University of Antwerp; Antwerp, Belgium; June 29, 2015

“Right Church, Wrong Pew: Justice Brennan and the Independence of Subnational Constitutional Law”; Symposium on State Constitutions in the United States Federal System; Ohio State University, Moritz College of Law; Columbus, Ohio; March 6, 2015

“Distinctive Identity Claims in Federal Systems: Judicial Policing of Subnational Variance”; European Academy, Institute for Studies on Federalism and Regionalism; Bolzano, Italy; February 12, 2015

“Comparing Practice and Constitutional Change in the United States and Canada: The Constraints of Federal Constitutional Design”; University of Trento; Trento, Italy; February 11, 2015

“The Constraints of Federal Constitutional Design: Practice and Constitutional Change in the United States and Canada”; Center for Inter-American Studies, University of Innsbruck; Innsbruck, Austria; January 20, 2015

“Distinctive Identity Claims in Federal Systems: Judicial Policing of Subnational Variance”; World Congress IX, International Association of Constitutional Law, Workshop on Subnational Constitutions in Federal and Quasi-Federal States; Oslo, Norway; June 17, 2014

“Distinctive Identity Claims in Federal Systems: Judicial Policing of Subnational Variance”; University of Copenhagen; Copenhagen, Denmark; June 13, 2014

Panelist, Conference: “Money in Politics 2030: Toward a New Jurisprudence”; Brennan Center for Justice, New York University School of Law; New York, New York; May 1-2, 2014

Commentator and moderator, Symposium: “The Future of Campaign Finance Reform”; Duke University Law School; Durham, North Carolina; February 7, 2014

“Partitioning and Rights: The U.S. Supreme Court’s Accidental Jurisprudence of Political Representation”; Workshop: “Electoral Law: the Virtuous or Vicious Circle of Theory and Practice”; McGill University Law School, Montreal, Canada; November 19, 2013

“Autonomy and Isomorphism: The Unfulfilled Promise of Structural Autonomy in State Constitutions”; Symposium: A Wave of Change: Celebrating the 50th Anniversary of Michigan’s Constitution and the

Evolution of State Constitutionalism; Wayne State University Law School; Detroit, Michigan; October 11, 2013

“The Incompatible Treatment of Majorities in Election Law and Deliberative Democracy”; Symposium: The Law of Deliberative Democracy; Straus Center for the Advanced Study of Law and Justice, New York University; New York, NY; April 5-6, 2013

Discussant and panel moderator, Symposium: “Under the Influence? Interest Groups, Lobbying, and Campaign Finance”; Baldy Center for Law and Social Policy, SUNY Buffalo Law School, Buffalo, New York; March 8-9, 2013

“The Myth of State Autonomy: Federalism, Political Parties, and the National Colonization of State Politics”; Research Group on Constitutional Studies, McGill University, Montreal, Canada; November 29, 2012

Fulbright Lecture: “Subnational Constitutions and the Struggle over Constitutional Meaning”; McGill University, Montreal, Canada; November 15, 2012

Participant, Liberty Fund Colloquium: “The Courts, the States, and Constitutional Liberty”; Santa Fe, New Mexico; February 2-5, 2012

Panelist, State of Political Discourse Roundtable; Association for the Study of Law, Culture, and Humanities, Annual Conference; Boyd School of Law, University of Nevada, Las Vegas; March 12, 2011

“Sites of Democratic Conflict Resolution: A Comparative Approach”; Conference on Challenges to Democracy in Divided Societies; Duke University Law School; Durham, North Carolina; January 29, 2011

“Sustainable Decentralization: Power, Extraconstitutional Influence, and Subnational Symmetry in the United States and Spain”; Conference on New Agents in International Law; Catalan Observatory, Stanford University; Palo Alto, CA; January 21, 2011

“Commentary on Robert F. Williams, *The Law of American State Constitutions*”; Rutgers University-Camden Law School; Camden, New Jersey; November 29, 2010

“Anonymity and Democratic Citizenship”; Symposium on Privacy, Democracy, and Elections; William & Mary Institute of Bill of Rights Law, William & Mary Law School; Williamsburg, Virginia; October 22, 2010

“Sustainable Decentralization: Power, Extraconstitutional Influence, and Subnational Symmetry in the United States and Spain”; Conference on State Constitutionalism in the 21st Century; Pennsylvania State University Law School; State College, PA; September 22, 2010

“Plagiarism and Academic Integrity: A Professional School Perspective”; Genteels’ Excellence in Teaching Conference: Strategies to Maximize Student Engagement; University at Buffalo, Center for Teaching and Learning; Buffalo, N.Y.; March 20, 2010

“The Dignity of Voters – A Dissent”; Symposium: How Far Have We Come Since 2000?; University of Miami Law School; Miami, Florida; January 31, 2009

“Fraud and Error in Voting: Is Democracy in Danger?”; University at Buffalo Law School, Christopher Baldy Center for Law and Social Policy; Buffalo, N.Y.; October 30, 2008

“How to Build and Write Winning Legal Arguments”; Erie Institute of Law; Buffalo, New York; May 8, 2008

“In Search of Subnational Constitutionalism”; Seventh World Congress of the International Association of Constitutional Law; Athens, Greece; June 11-15, 2007

“Representation Without Party: Lessons from State Constitutional Attempts to Control Gerrymandering”; Pennsylvania State University, Dickinson School of Law; Carlisle, Pennsylvania; December 4, 2006

“What Is ‘Fair’ Partisan Representation and How Can It Be Constitutionalized? The Case for Fixed Election Districts”; Conference: Is the Wisconsin Constitution Obsolete?; Marquette University; Milwaukee, Wisconsin; October 6, 2006

“Representation Without Party: Lessons from State Constitutional Attempts to Control Gerrymandering”; Annual State Constitutional Lecture, Center for State Constitutional Studies, Rutgers University-Camden; Camden, New Jersey; November 2, 2005

“*Kelo v. New London*: The Public-Private Distinction in Local Government Law”; Association of Law Libraries of Upstate New York, Fall Conference; Cheektowaga, New York; October 1, 2005

“Democracy Without a Net? On the Possibility of Self-Sustaining Constitutional Constraints on Antidemocratic Behavior in a Democracy”; St. John’s University School of Law; Queens, New York; Distinguished Speaker Series; September 27, 2004

“Structuring the Political Process under American State Constitutions”; Federalism and Sub-National Constitutions: Design and Reform; Rockefeller Foundation Study and Conference Center; Bellagio, Italy; March 23-26, 2004

Discussant, panel on Southern State Constitutions: Race, Rights, and Reform; Southern Political Science Association, Annual Conference; New Orleans; January 8, 2004

Co-organizer and panelist, Symposium: Dual Enforcement of Constitutional Norms; presented paper, “Whose Constitution Is It? Why Federalism and Constitutional Positivism Don’t Mix”; William & Mary Law School and National Center for State Courts; Williamsburg, Virginia; November 14, 2003

“State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions”; Faculty Workshop; Indiana University School of Law, Indianapolis; Oct. 28, 2003

Selected earlier presentations: Albany Law School, American Political Science Association Annual Meeting (multiple), American University College of Law, Association of American Law Schools Annual Meeting (multiple), Columbia Law School, Florida State University College of Law, University of Michigan Law School, New York Civil Liberties Union, New York Governor's Criminal Justice Conference, New York University Law School, Roger Williams University School of Law, South Texas College of Law, University of Connecticut School of Law, University of North Carolina Law School, University of Toronto

LEGISLATIVE TESTIMONY

Testimony on constitutionality of proposed ethics legislation; Buffalo Common Council, Committee on Legislation; Buffalo, N.Y.; September 8, 2009

Testimony on selection of N.Y. Court of Appeals judges; New York State Senate Standing Committee on the Judiciary; Buffalo, N.Y.; May 21, 2009

Testimony before New York Senate Standing Committee on Elections; Hearing on S1616, S3372, S3996, S3995, S1266, S4035; Buffalo, N.Y.; April 23, 2009

Testimony before NY Commission on Promoting Public Confidence in Judicial Elections; Buffalo, N.Y.; Sept. 23, 2003

SELECTED PROFESSIONAL SERVICE

- Editorial Board:** Election Law Journal (since 2007)
Studies in Territorial and Cultural Diversity Governance (Brill/Nijhoff) (since 2021)
- Peer Reviewing:** Cambridge University Press, Columbia Law Review, Edward Elgar, Election Law Journal, European Academy, Journal of Empirical Legal Studies, Law and Courts, Law and Policy, Law and Politics, McGill Law Journal, Oxford Journal of Legal Studies, Oxford University Press, Political Science Quarterly, Princeton University Press, Publius: The Journal of Federalism, Research Foundation Flanders, Revista de Derecho Político, Routledge Press, Sage Publishing, Stanford Law Review, University of Chicago Press, University of Pennsylvania Law Review, Yale Law Journal

SELECTED MEDIA APPEARANCES

Print and Online

International

24 Heures (Switzerland), Agência Estado (Brazil), Al Jazeera, Anadolu Agency (Turkey), Brasil 247, Caijing Magazine (Taiwan), Canadian Broadcasting Corp., Clarín (Argentina), The Daily Telegraph (UK); Der Spiegel (Germany); Deutsche Welle (Germany), Le Devoir (Montreal), The Economist (UK), EFE News Service (Spain), France 24, HuffPost Italy, The Independent (London), The Observer (UK), Pravda (Slovakia), La Presse (Montreal), RIA Novosti (Russia), Reforma (Mexico), The Straits Times (Singapore), La Tercera (Santiago, Chile), Times of Israel, Tribune de Genève (Switzerland), Voice of America

Domestic

ABC News, ABC News/FiveThirtyEight, Albany Times-Union (Albany, N.Y.), American Bar Association Journal, The American Independent, American Lawyer, Arizona Republic, Associated Press, Atlanta Journal-Constitution, Bar Leader Magazine (ABA), Black Enterprise Magazine, Boston Globe, Bloomberg BNA, Bloomberg Law, Bloomberg News, Brooklyn Paper (Brooklyn, N.Y.), Buffalo Law Journal, Buffalo News, Business Insider, BuzzFeed News, Capital New York (NYC), CBS News, CheckYourFact.com, Christian Science Monitor, City and State Magazine (NY), City Newspaper (Rochester), Cleveland Plain Dealer, CNBC, CNN, Courier Newsroom, The Daily Beast, Daily Gazette (Schenectady, N.Y.), Daily Record (Rochester); Dayton (Ohio) Daily News; Detroit Free Press, Fort Worth (Tex.) Star-Telegram, Gannett News Service; The Hill (Washington); Huffington Post, Ithaca Journal, Ithaca Times, Las Vegas Review Journal, Junior Scholastic, Law & Crime, Legislative Gazette (Albany, N.Y.), Law360, LeadStories.com, Livingston County News, Lockport (N.Y.) Union-Sun and

Journal, MassLive.com (Springfield, Mass.), McClatchy News, Milwaukee Journal Sentinel, MSNBC, National Public Radio/Morning Edition, National Review, NBCNews.com, NBC Universal, The New Republic, Newsweek, New York Focus, New York Law Journal, New York Newsday (Long Island), New York Sun, New York Times, The New Yorker, News Journal (Wilmington, Del.), Newsweek, Pacifica Network and Public News Service, Philadelphia Inquirer, Philadelphia Tribune, Phoenix Magazine (Ariz.), Politico, Politifact, ProPublica (New York City), Prism Report, RealClear Politics, Retail Dive, Reuters, Rhode Island Monthly, Rochester Daily Record, Rochester Democrat and Chronicle, Roll Call, San Diego Times, Seattle Weekly, Scholastic Magazine, Sinclair Broadcast Group, Smithsonian.com, South Florida Sun Sentinel, Taibibi.substack.com, ThinkProgress.com, Time Magazine, Tonawanda News, Unavision Noticias, U.S. Law Week, USA Today, Voice of America, Wall Street Journal, Washington Post, Washington Times, Wired, WSKG (Binghamton, N.Y.)

Radio, Television, and Podcasts (international and domestic)

Brasil 247, CBS Channel 2 (NYC), CNBC Asia, CTV Television Network (Canada), Jim Bohannon Show-WestwoodOne Radio (syndicated); Kansas Public Radio; KRCC Radio (Colorado Springs); Lawyer 2 Lawyer (podcast); National Post Radio (Sirius XM Satellite Radio, Toronto); The Ringer (HBO), Radio Free Europe, Spectrum News, Time-Warner Television, Voice of America TV, Voice of Islam Radio (UK), WAMC Radio (Albany), WBEN Radio (Buffalo); WBFO Radio (Buffalo), WCOT Radio (Tallahassee, Fla.), WGRZ-TV (Buffalo), WEDG-FM (Buffalo); WGN-TV (Chicago), WGRZ-TV (Buffalo); WHAM Radio (Rochester, NY); WHDT-TV (West Palm Beach, Fla.), WHEC-TV (Rochester, NY); WIVB-TV (Buffalo), WKBW-TV (Buffalo), WKSE Radio (Buffalo), WLKK Radio (Buffalo), WLRN Radio (Miami), WNED Radio (Buffalo), WNYC Radio (NYC), WORT (Madison, Wis.), WROC Radio (Rochester, NY), WTSS Radio (Buffalo); WWKB Radio (Buffalo), WWWS Radio (Pittsburgh), WYNN-TV (Buffalo)

AFFILIATIONS

Professional

American Political Science Association
Association of American Law Schools
Center for the Study of Federalism
Deliberative Governance and Law Project
International Association of Constitutional Law
 Research Group on Constitutionalism and Social Pluralism
 Research Group on the Constitutional Status of Cities
 Research Group on Subnational Constitutions
International Society of Public Law (ICON•S)

Selected Public Service

Committee to Reform the State Constitution (since 2016)

NY LEAD (since 2016)

Lawyers for the Arts (annual musical performance fundraiser) (since 2017)

New York State Bar Association Task Force on the Presidential Election (2020-21)

Board of Directors, Lewiston Northwest Jazz Festival, Lewiston, NY (since 2020)

New York State Bar Association Task Force on Voting Rights and Democracy (2021-)

New York State Black Legislative Task Force, Affirmative Action Subcommittee (2023)

BAR ADMISSIONS

Member of Bars of New York, District of Columbia (inactive), and Massachusetts (retired)

HOBBIES

Professional jazz pianist; mediocre tennis player

REFERENCES AVAILABLE UPON REQUEST