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Constitutionalism in South America - Papers by Joel I. Colon-Rios, Associate Professor of Law, Victoria University of Wellington

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"Beyond Parliamentary Sovereignty and Judicial Supremacy: The Doctrine of Implicit Limits to Constitutional Reform in Latin America" 

44(3) Victoria University of Wellington Law Review 521-534 (2013)

Victoria University of Wellington Legal Research Paper No. 116/2017

JOEL I. COLÓN-RÍOS, Victoria University of Wellington - Faculty of Law

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This paper provides an introduction to the Latin American doctrine of implicit limits to constitutional reform. The paper begins by discussing the way in which this doctrine relates (and differs) from the doctrine of the basic structure, adopted in several common law jurisdictions such as India and Belize. It then examines a decision of the Constitutional Court of Colombia in which the doctrine of implicit limits received one of its clearest formulations. Finally, it is argued that the Latin American approach goes beyond both parliamentary sovereignty and judicial supremacy, providing the constituent people (as opposed to parliament and the courts) with the final word on the validity of important constitutional changes.

"Re-Constituting Puerto Rico"

Revista del Colegio de Abogados de Puerto Rico, Vol. 67, No. 2, April-June 2006
Victoria University of Wellington Legal Research Paper No. 117/2017

JOEL I. COLÓN-RÍOS, Victoria University of Wellington - Faculty of Law
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The debate about the Puerto Rican Constituent Assembly has failed to ask for the meaning of the concept of constituent power in the context of the juridical apparatus that regulates the relationship between the island and the United States. This article seeks to show that the need to convene a constituent assembly evidences the presence of a grave injustice in that relationship, an injustice that is not susceptible of being corrected through ordinary juridical means. If successful, the Constituent Assembly would make possible, for the first time in Puerto Rican history, a constitutional order based on the constituent power of the people.

"Constitutionalism and Democracy in Latin America"

New Zealand Association for Comparative Law Yearbook (2015)
Victoria University of Wellington Legal Research Paper No. 118/2017

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The objective of this short paper is to examine two of the most interesting (and ongoing) developments in Latin American constitutionalism: the doctrine of implicit limits to constitutional reform and the validation of constitutions of 'dubious' legal origins through the theory of constituent power. Particular emphasis will be given to Article 411 of the new Constitution of Bolivia, as it nicely captures both of these developments. The doctrine of implicit limits to constitutional reform provides judges not only with the power to strike down unconstitutional legislation, but also constitutional amendments that are deemed inconsistent with certain fundamental principles or with the constitution as a whole. The theory of constituent power posits that the people possess an extralegal constitution-making power, which may be exercised at any moment and even in violation of the established constitutional order. Although mostly confined to academic discussions since the French Revolution, in Latin America (unlike in the Anglo-American world) constituent power has long been present in constitutional discourse. Nevertheless, the theory has been playing a central role in the rebalancing constitutionalism and democracy that has taken place during the last decades in several countries in the region.

"The Rights of Nature and the New Latin American Constitutionalism"

New Zealand Journal of Public and International Law (2015)
Victoria University of Wellington Legal Research Paper No. 119/2017

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This comment was presented at the "New Thinking on Sustainability" conference held at Victoria University of Wellington in February 2014 in response to the keynote address from Linda Sheehan, "Implementing Rights of Nature Through Sustainability Bills of Rights".

"Democratizar a Puerto Rico (Democratising Puerto Rico)"

85 Revista Jurídica UPR 857-882 (2016)
Victoria University of Wellington Legal Research Paper No. 120/2017

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Spanish Abstract: En este artículo consideraré una serie de mecanismos dirigidos a ampliar las oportunidades de participación política en el contexto del orden constitucional puertorriqueño. En la Parte I, ofreceré algunos comentarios iniciales en torno a la relación entre el constitucionalismo y la democracia. En ese análisis, utilizaré como ejemplo principal algunas de las deficiencias democráticas de la Constitución de 1952. En la Parte II, mostraré por qué la teoría del poder constituyente ofrece una manera de entender la relación entre el constitucionalismo y democracia que nos fuerza a pensar en la implementación de mecanismos que permitan altos grados de participación popular en el cambio constitucional. Finalmente, y descansando en las bases sentadas en las primeras dos partes del escrito, en la Parte III presento dos mecanismos específicos (la Asamblea Constituyente convocada 'desde abajo' y la iniciativa popular para enmendar la constitución) que, a mi juicio, reducirían de manera importante la distancia entre el pueblo puertorriqueño y su constitución.

English Abstract: In this article, I consider a series of mechanisms aimed at expanding the opportunities of political participation in the Puerto Rican constitutional order. In Part I, I offer some initial comments on the relationship between constitutionalism and democracy, using as a prime example some of the democratic shortcomings of the 1952 Constitution. In Part II, I show that when that relationship is understood in light of the theory of constituent power, one can clearly see the need of providing opportunities for heightened popular participation in constitutional change. Finally, resting on the bases laid down in the first two parts of the article, in Part III I present two specific mechanisms (the Constituent Assembly convened 'from below' and the popular initiative to amend the constitution) which, in my opinion, would reduce in important ways the distance between the Puerto Rican people and its constitution.

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The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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