SOCIAL SCIENCE RESEARCH NETWORK

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
UC DAVIS SCHOOL OF LAW
Vol. 9, No. 4: June 19, 2007

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T A B L E O F C O N T E N T S



"Structuring Judicial Review of Electoral Mechanics, Part I:
Explanations and Opportunities"
UC Davis Legal Studies Research Paper No. 102
University of Pennsylvania Law Review, Vol. 156, 2007

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ABSTRACT: This paper is the first in a two-part series on constitutional judicial review of what the Supreme Court has termed “electoral mechanics,” defined to include “the registration and qualification of voters, the selection and eligibility of candidates, and the voting process.” Over the last few years, this subject has assumed a new salience as reformist litigators challenge novel state-mandated procedures for registration, voting, and vote counting. For the first time since the 1960s, a significant number of voter-participation cases are moving through the lower courts. The courts are substantially in agreement that these claims are governed by the doctrinal framework set forth in Burdick v. Takushi, 504 U.S. 428 (1992), but there is a catch: Burdick's statement of black-letter law significantly misdescribes the Supreme Court's actual practice in its electoral mechanics jurisprudence—or so I argue here. As a result, lower courts confronted with the new generation of voter-participation claims have often pursued analytic methods that the Supreme Court is not likely to find congenial. Important avenues for doctrinal experimentation and elaboration are being overlooked. This paper develops a schematic map and a vocabulary for talking about the Supreme Court's methods in its electoral mechanics jurisprudence, one which should help lower courts (as well as litigants and law professors) to think more productively about the critical threshold question—what is the standard of review, and why?—in such cases. By way of illustration, the paper examines and critiques successive district court opinions enjoining Georgia's new photo-identification requirements for voting.

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"Do Citizens Care About Federalism? An Experimental Test"
UC Davis Legal Studies Research Paper No. 114
Journal of Empirical Legal Studies, 2007

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ABSTRACT: The ongoing debate over the political safeguards of federalism has essentially ignored the role that citizens might play in restraining federal power. Scholars have assumed that citizens care only about policy outcomes

and will invariably support congressional legislation that satisfies their substantive policy preferences, no matter the cost to state powers. Scholars thus typically turn to institutions—the courts or institutional features of the political process—to cabin congressional authority. We argue that ignoring citizens is a mistake. We propose a new theory of the political safeguards of federalism in which citizens help to safeguard state authority. We also test our theory using evidence from a nationally representative survey experiment that focuses on the timely issue of physician-assisted suicide. We find that citizens are not single-mindedly interested in policy outcomes; trust in state governments and federalism beliefs, on the urging of political elites, reduce their willingness to support a federal ban on physician-assisted suicide.

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"Piercing the Veil"
UC Davis Legal Studies Research Paper No. 112
*Yale Law Journal*, Vol. 112, April 2003


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ABSTRACT: Human rights law has a problem with religion. In a postmodern world in which the nation-state has been deconstructed and eighteenth- and nineteenth-century notions of unmediated national sovereignty have been properly put to rest, religion - and its attendant category, culture - represent the New Sovereignty. September 11th crystallized this fact. The infamous Taliban regime in Afghanistan assumed power in 1996 and immediately began stripping women of fundamental human rights. But war, not law, defeated what was perhaps the world's most ruthless fundamentalist regime. This Article argues that religion qua religion is less the problem than is law's construction of this category. Premised on Enlightenment theory, law has a fundamentalist view of religion as law's other. Confident that freedom in the public sphere is freedom itself, law posits and, indeed, preserves religion as an extralegal sphere that is static, irrational, and imposed. Individuals may exit religion but not reform it. Increasingly, fundamentalists are taking advantage of this legal tradition. Because law does not recognize religious communities as contested and subject to change, legal norms such as the freedom of religion and the right to culture defer to the claims of patriarchal elites. The result is that, in case after case in both national and international law, law is siding with fundamentalists over modernizers. But on the ground, human rights activists working in Muslim communities are piercing the veil of religious sovereignty. In the work of these activists, this Article hears the rumblings of the New Enlightenment: Today, individuals demand democracy, reason, and rights within religious and cultural communities, not just without them. Examining the campaigns of reformers in

Muslim communities through the overlooked efforts of transnational human rights networks and archives of women's human rights education manuals - illuminated by interviews with leading activists from around the globe - this Article identifies an emergent, conceptually coherent framework for operationalizing modernity and freedom within a context of culture and community. This New Enlightenment upsets the foundation of the legal understanding of the right to religion, which has deferred to leaders' views over those of members. While feminists have challenged the absolute sovereignty of the private sphere, particularly on the issue of violence, women's right to contest and create normative community - that is, to make cultural and religious meanings - has been far less theorized. This Article suggests that women's human rights law must go beyond freedom from violence to freedom to make the world.

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