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Vol. 8, No. 20: Sep 20, 2018

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Announcements

Constitutional Law: Papers by Joel I. Colón-Ríos, Associate Professor of Law, Victoria University of Wellington

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"Notas Sobre La Reforma Constitucional Y Sus Límites (Notes on the Amending Power and its Limits)"

In Juan Carlos Henao (ed) Dialogos Constitucionales de Colombia con el Mundo (Universidad Externado de Colombia, 2013) pp 383-402
Victoria University of Wellington Legal Research Paper No. 94/2018

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Spanish Abstract: En Colombia, así como en el resto de América Latina, los gobiernos recurren con frecuencia a la reforma constitucional y, en ocasiones, dichas reformas son altamente controversiales. No es sorprendente, por lo tanto, que diversas cortes a través de la región hayan asumido jurisdicción para declarar inconstitucionales enmiendas constitucionales, desarrollando así la doctrina de los límites implícitos al poder de reforma. El presente escrito es un intento de contribuir al debate sobre las virtudes y límites de dicha doctrina en el contexto colombiano, haciendo especial énfasis en la relación entre ésta y la teoría del poder constituyente.

English Abstract: In Colombia, as in the rest of Latin America, governments often resort to constitutional reform, and sometimes these reforms are highly controversial. It is not surprising that various courts across the region have assumed jurisdiction to declare constitutional amendments unconstitutional, developing the doctrine of implicit limits to the amending power. This paper is an attempt to contribute to the debate about the virtues and limits of this doctrine in the Colombian context, with special emphasis on the relationship between it and the theory of constituent power.

"¿Pueden Haber Enmiendas Constitucionales Inconstitucionales? Una Mirada Al Derecho Comparado (Can There Be Unconstitutional Constitutional Amendments? A Comparative Perspective)"

Victoria University of Wellington Legal Research Paper No. 95/2018

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Spanish Abstract: Este artículo tiene tres objetivos principales. Primero, analizar las bases teóricas de la doctrina de los límites implícitos al poder de reforma. Segundo, examinar las maneras en que dicha doctrina a sido tratada en diversas jurisdicciones (incluyendo Estados Unidos, Alemania, India, y Colombia). Finalmente, considerar la doctrina la luz del ordenamiento jurídico puertorriqueño.

English Abstract: This article has three main objectives. First, to analyze the theoretical bases of the doctrine of the implicit limits to the power of constitutional reform. Second, to examine the ways in which this doctrine has been treated in various jurisdictions (including the United States, Germany, India, and Colombia). Finally, to consider the doctrine the light of the Puerto Rican legal system.

"Constitutionalising the Senate: A Modest Democratic Proposal"

Victoria University of Wellington Legal Research Paper No. 96/2018

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The Senate Reference did not provide an ideal situation for clarifying the nature and limits of the power of constitutional reform in Canada. The facts gave the Court no choice but to recognize the fundamental role that the Senate plays in the Canadian constitutional order, and therefore to place some of its main features outside the scope of section 44 of the Constitution Act, 1982, even if they ran contrary to basic democratic values. For example, in order to explain that the implementation of consultative elections would alter the constitution's basic structure, the Court was forced to construe in a negative light the prospect of a democratically legitimate Senate. In this paper, rather than attack or defend bicameralism, we will argue in favour of attributing a democratically reconstituted Senate with the primary responsibility of reviewing the constitutionality of legislation (as opposed to acting as a chamber of "sober second thought" with respect to the policy decisions of the House of Commons). Such an approach, we suggest, would augment the overall democratic legitimacy of the constitutional order.

"Apuntes Sobre Legitimidad Democrática y Asambleas Constituyentes (Notes about Democratic Legitimacy and Constituent Assemblies)"

Victoria University of Wellington Legal Research Paper No. 97/2018

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Spanish Abstract: Vivimos en la época de las Asambleas Constituyentes. La idea de que una nueva constitución no debe ser creada por los órganos ordinarios del estado (por algún tiempo abandonada desde la creación de las primeras constituciones nacionales en el Siglo 18 y 19), domina los procesos de creación constitucional. En América Latina, así como en otras partes del mundo, quien plantee la necesidad de adoptar una constitución nueva, parece destinado a enfrentarse a la realidad de que la legitimidad democrática de tal proceso dependerá en gran parte de que el mismo se lleve a cabo a través de una asamblea especial (comúnmente identificada como Asamblea Constituyente) y no, por ejemplo, a través del proceso ordinario de reforma constitucional. En este breve escrito, me dispongo a examinar algunas de las razones por las cuales esa realidad podría estar justificada.

English Abstract: The idea that a new constitution should not be created by the ordinary organs of the state (for some time abandoned since the creation of the first national constitutions in the 18th

and 19th centuries) increasingly dominates processes of constitutional creation. In Latin America, as well as in other parts of the world, whoever proposes the need to adopt a new constitution seems destined to face the reality that the democratic legitimacy of such a process will depend, to a great extent, on the fact that it is carried out through a special assembly and not, for example, through the ordinary process of constitutional reform. In this brief paper, I examine some of the reasons why that reality might be justified.

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The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

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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.

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