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To date, one major focus of my research and writing has been in the area of comparative constitutional law and constitutional theory. I intend to devote the next few years to completing a book, entitled *Rethinking Comparative Constitutional Law: Multinational Democracies, Constitutional Amendment, and Secession,* which ties together the different strands of my work. Let me briefly describe how several of my previous articles fit together and have set the stage for this project.

In "Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation" (1999) 74(3) Indiana Law Journal 819-892, I sought to explore the implications of the globalization of the practice of modern constitutionalism for constitutional theory. The article took, as its starting point, the increased use of comparative models at all stages in the life-cycle of modern constitutions, including constitutional drafting and constitutional interpretation. Its principal focus was comparative constitutional interpretation in the context of rights adjudication. At the time it was written, what was remarkable was the failure of constitutional theorists and constitutional courts to come to terms with the implications of the growth of comparative engagement in constitutional jurisprudence for conventional theories of constitutional interpretation. The failure to provide adequate reasons for this new constitutional practice, I argued, imperiled the legitimacy of judicial review. The article was the first attempt to articulate the justifications inherent in the use of comparative constitutional law by courts in South Africa and Canada. It set out three models of comparative constitutional interpretation, and explored the normative implications of each one.

"National Minorities and Ethnic Immigrants: Liberalism's Political Sociology" (2002) 10(1) Journal of Political Philosophy 54-78, arose out of a different set of concerns and interests, and was written as a contribution to the extensive political theory literature on multiculturalism. In particular, it was a response to Will Kymlicka's seminal book *Multicultural Citizenship*. Its starting point was the distinction made by Kymlicka, Michael Walzer, and Charles Taylor between two different categories of ethnocultural minorities: territorially concentrated, historically self-governing national minorities (e.g. the Catalans, the Quebecois), and ethnic immigrants. The practice of liberal democracies has been to accommodate the claims of these groups in different ways – to accord extensive rights of self-government through federalism to national minorities, while according a narrower set of rights to ethnic immigrants that facilitate their participation in common political and economic institutions. Kymlicka argues that this practice is normatively justified. The point of this article was to challenge this distinction on normative grounds (because it does not flow from the importance that Kymlicka attached to cultural membership as a primary social good in the Rawlsian sense), and to raise some larger questions about the appropriate role of political sociology in normative political theory.

"Ackerman's Higher Lawmaking in Comparative Constitutional Perspective: Constitutional Moments as Constitutional Failures?" (unpublished) takes up two seemingly contradictory strands in Yale constitutional theorist Bruce Ackerman's work: his indigenous theory of American constitutional development, and his important contributions to comparative constitutional law. It poses the question of whether Ackerman's central contribution to constitutional theory – the constitutional moment (instances of extra-legal constitutional regime change in the American constitutional order) – has comparative purchase. I argue that it does, but only if one reinterprets constitutional moments as moments of constitutional failure, marked by the inability of the formal rules of constitutional amendment to provide a procedural framework for constitutional change at moments of constitutive constitutional politics (as

occurred during the American Founding and Reconstruction). For the rules of constitutional amendment to operate effectively, they must also be accepted as standing outside the terrain of substantive constitutional politics. However, rules of constitutional amendment are not substantively neutral, since the determination of which individuals and communities can participate in constitutional change reflects controversial judgments about the locus of political sovereignty. Constitutional politics, accordingly, depends on the suspension of political judgment toward the rules of constitutional amendment. However, that suspension of judgment will become most difficult to sustain at those moments when the substantive dispute challenges the very conception of political community that underlies the rules for constitutional amendment. At those moments of constitutive constitutional politics – such as secession -- decisions made under the rules of constitutional amendment cannot produce political settlement, and the constitutional system may come tumbling down. I suggest that similar moments of constitutive constitutional politics occur in other constitutional systems.

My work-in-progress, "Rethinking Comparative Constitutional Law: Constitutionalism, Nationalism and the State", and the book which will come out of it, *Rethinking Comparative Constitutional Law*: *Multinational Democracies, Constitutional Amendment, and Secession,* will build upon these three strands of work but will take them in a new direction. The paper will be about the future intellectual agenda for comparative constitutional law. Comparative constitutional law has emerged as a major field of scholarship over the past decade. However, its focus is rather narrow. The critical literature (including my own previous work – e.g. "The *Lochner* Era and Comparative Constitutionalism" (2004) 2(1) *International Journal of Constitutional Law* 1-55 and "Migration as a New Metaphor in Comparative Constitutional Law" in S. Choudhry, ed., *The Migration of Constitutional Ideas* (New York: Cambridge University Press, forthcoming 2006)) is almost exclusively concerned with the relationship between rights, democracy, and judicial review. Thus, the questions it has focused on are whether bills of rights should be constitutionally entrenched, which rights should be constitutionally enshrined, how those rights should be interpreted (including the question of whether recourse should be had to comparative materials), and what the institutional arrangements surrounding the enforcement of constitutional rights should be. And this literature focuses on a fairly limited set of case-studies: South Africa, Israel, Germany, Commonwealth jurisdictions (Canada, the United Kingdom, New Zealand, sometimes Australia, but never India), and the United States. The recent American debate prompted by the use of comparative materials by the United States Supreme Court in *Lawrence v. Texas* and *Roper v. Simmons* are part of this larger academic conversation.

My concern is that by defining its intellectual agenda so narrowly, constitutional law is becoming increasingly disconnected from the practice of modern constitutionalism. In transitional democracies such as Iraq, Sri Lanka and Afghanistan, as well as in well-established democracies such as Spain, the United Kingdom, and Canada, the central question of constitutional politics is *not* what the institutional arrangements surrounding the protection of universal human rights should be. Rather, it is how to design institutions that accommodate a certain kind of divided society – a multinational polity. The focus is not on universal human rights, but on constitutional design through devices such as federalism, minority language rights, constitutional amendment, and secession. Yet the field is almost entirely silent on these issues. In this paper, I will develop an alternative account of comparative constitutional law, in which the central question is the relationship between constitutionalism, majority nation-building and minority nationalism. I shall ground this re-conceptualization of the field through an engagement with the political theory literature on nationalism and secession. Although political theorists have dominated the discussion of these issues, they have been inattentive to questions of constitutional design. As a case-study, I will explore the constitutional politics of the design of procedures for constitutional amendment and secession in Iraq, Sri Lanka and Canada. I will build on the notion of constitutive constitutional politics that I have developed in response to Bruce Ackerman's theory of constitutional moments. My argument will be that in multinational polities, rules governing constitutional amendment are a major site of constitutional politics, because they reflect a view about the ultimate locus of political sovereignty and political identity of that political community.