

## EDITOR'S FOREWORD

*Vincent Martin Bonventre\**

Lawrence H. Cooke—Albany Law School class of 1938, elected to New York's highest court, and shortly thereafter, under the then new appointment system, elevated to serve as Chief Judge—was a faithful friend to his alma mater and one of its proudest and most esteemed sons. He delivered lectures and spoke to students about the noble callings of the legal profession, urging them at all times: “When in doubt, take the high road.” He was an enthusiastic supporter of this law review and, indeed, helped establish our special annual issue, *State Constitutional Commentary*, and served as its first Chair.

Chief Judge Cooke continues to add luster to the *Albany Law Review* each year with our annual State Constitutional Commentary Symposium bearing his name, the eleventh of which was held last spring. In addition, the life and career of Chief Judge Cooke have been celebrated in the pages of this law review on several occasions, including in the year 2000, the year of his passing.<sup>1</sup> We again pay tribute to the Chief Judge by leading this issue with a retrospect of his life and legacy.<sup>2</sup>

This publication—the twenty-second edition of *State Constitutional Commentary* and the eighth edition of *New York Appeals*—marks the second time that these two special issues have been joined. It is therefore particularly appropriate to open with an article about Lawrence Cooke. He had an immense impact on appellate decision-making in New York State and especially on the case law of the Court of Appeals, as well as on the re-emergence of independent state constitutionalism nationally.

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<sup>1</sup> Vincent Martin Bonventre, *Tribute to Chief Judge Lawrence H. Cooke*, 64 ALB. L. REV. 1 (2000); Judith S. Kaye, *Homecomings: A Eulogy for Chief Judge Lawrence H. Cooke*, 64 ALB. L. REV. 5 (2000).

<sup>2</sup> Jay C. Carlisle II & Anthony DiPietro, *The Life and Legacy of Chief Judge Lawrence H. Cooke: “Truly an Exemplary Life. A Life Well Lived,”* 80 ALB. L. REV. 1233 (2016/2017).

Hence, the *New York Appeals* half of this issue—which permanently bears the name of Anthony V. Cardona, the beloved late Presiding Justice of the Appellate Division, Third Department, and 1970 alumnus of our law school<sup>3</sup>—opens with: “The Life and Legacy of Chief Judge Lawrence H. Cooke.”<sup>4</sup> Jay Carlisle and Anthony DiPietro remind us “not only [of] an accomplished judge,”<sup>5</sup> but of Cooke as “a leader in all aspects of life, a man of integrity, and a being of moral excellence.”<sup>6</sup>

Next, Alan Pierce charts the lineage of each of the seven seats on the New York Court of Appeals—an absolutely delightful contribution for those of us who are fascinated by all things related to the state’s high court.<sup>7</sup>

David McCraw, vice president and assistant counsel of the *New York Times*, as well as a 1992 graduate of our law school, critiques recent appellate decisions that raise questions about New York’s journalistic privilege, which was invigorated in the Court of Appeals’ 1988 *O’Neill*<sup>8</sup> decision and is in need of recommitment.<sup>9</sup>

Brian Shoot comments on an arcane but extremely important appellate doctrine: preserving arguments for Court of Appeals review.<sup>10</sup> Specifically, he addresses the apparent development of non-preservation actually benefitting the party that failed to raise an issue at trial.

Then, Scott Lucas urges that the underlying purpose of New York Labor Law Article 6 be given full effect to protect employee wages—i.e., that the dichotomy between deductions and failures to pay be rejected.<sup>11</sup>

The *State Constitutional Commentary* half of the issue begins with Gerald Benjamin, who decries the lack of serious progress toward the development of regional governance in the Hudson Valley of New York, where the needs of Chassidic school children

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<sup>3</sup> Matthew J. Laroche & Peter M. McCormack, Foreword, *New York Appeals: A New Tradition*, 73 ALB. L. REV. 645 (2010).

<sup>4</sup> Carlisle & DiPietro, *supra* note 2, at 1233.

<sup>5</sup> *Id.* at 1281.

<sup>6</sup> *Id.*

<sup>7</sup> Alan J. Pierce, *Whose Seat on the New York Court of Appeals Do You Have*, 80 ALB. L. REV. 1283 (2016/2017).

<sup>8</sup> *O’Neill v. Oakgrove Constr., Inc.*, 523 N.E.2d 277, 279 (N.Y. 1988).

<sup>9</sup> David McCraw, *Found and Lost: Reclaiming the Press Privilege for Nonconfidential Information*, 80 ALB. L. REV. 1297 (2016/2017).

<sup>10</sup> Brian J. Shoot, *The Legislature’s Power to Correct the Anomaly of Benefitting from a Failure to Preserve an Argument for Appellate Review*, 80 ALB. L. REV. 1323 (2016/2017).

<sup>11</sup> Scott A. Lucas, *Labor Law Article 6: A Misunderstood Law that Fully Protects All Employees’ Wages*, 80 ALB. L. REV. 1355 (2016/2017).

are thereby underserved.<sup>12</sup>

Di Ma and Bryan Gottlieb, both 2014 graduates of Albany Law School and *Albany Law Review* alumni, argue that New York's constitutional instructions on gambling and the diverse exceptions thereto constitute a hopeless patchwork that needs amendment to reflect current realities.<sup>13</sup>

Calvin Johnson takes a fresh look at New York's ratification of the U.S. Constitution as a lens through which to view the entire meaning and process of the Constitution's adoption.<sup>14</sup>

Kevin Smith argues against the recurring proposal for a "convention of the states," primarily on the ground that such an event would be documented by establishment representation of the two major political parties, rather than by actual representation of the citizens.<sup>15</sup>

Finally, Richard Price explores Hans Linde's influence on judicial federalism across the nation and most productively in Oregon.<sup>16</sup> Linde, formerly a justice of that state's highest court and a founding board member of *State Constitutional Commentary*, has deservedly been dubbed the "intellectual godfather" of state constitutional law.<sup>17</sup>

This joint issue was made possible by the efforts of Andrew Ko and Gabriella Levine, the Executive Editors for *New York Appeals* and *State Constitutional Commentary*, respectively. Additionally, the dedication of volume 80's Editor-in-Chief, Jessica Pollack, was indispensable to the completion of all four issues in this 2016-2017 publication—as well as of a few issues from the previous volume.

Notably, also, Jessica Pollack's Editorial Board hosted the eleventh annual Chief Judge Lawrence H. Cooke State Constitutional Commentary Symposium last spring. "Off the Bench: Reflections on Judging on the High Court," featured two former Court of Appeals judges offering their very candid perspectives on appellate decision-making on a court of last resort. Hon. Eugene F. Pigott Jr. and Hon. Robert S. Smith

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<sup>12</sup> Gerald Benjamin, *The Chassidic Presence and Local Government in the Hudson Valley*, 80 ALB. L. REV. 1383 (2016/2017).

<sup>13</sup> Di Ma & Bryan Gottlieb, *I'd Wager It's Time for a Change: Reconsidering New York State's Constitutional Prohibition against Gambling*, 80 ALB. L. REV. 1465 (2016/2017).

<sup>14</sup> Calvin H. Johnson, "Impost Begat Convention": *Albany and New York Confront the Ratification of the Constitution*, 80 ALB. L. REV. 1489 (2016/2017).

<sup>15</sup> Kevin M. Smith, *A Case against a Convention of the States*, 80 ALB. L. REV. 1523 (2016/2017).


<sup>16</sup> Richard S. Price, *Linde's Legacy: The Triumph of Oregon State Constitutional Law, 1970-2000*, 80 ALB. L. REV. 1541 (2016/2017).

<sup>17</sup> *Id.* at 1542.

engaged both with each other and the enthusiastic audience in a very lively discussion. Thanks particularly to Gabriella Levine for organizing a fabulous event.

Additionally, members of the volume 81 Editorial Board—especially Elizabeth O'Reilly, Michael Woodward, and Olivia Pedersen—worked beyond the call of duty to help with the publication of the previous year's issues. And finally, Emma Tiner, the Editor-in-Chief for 2017-2018, has been extraordinary in assisting the previous year's Editor-in-Chief in ensuring the publication, as promptly as humanly possible, of this final issue of that volume. Thanks to her and to the others mentioned.

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