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The U.S. Constitution is different from those of other nations in that it almost exclusively emphasizes negative rather than positive rights. A negative right means government cannot interfere with your exercise of that right; Congress, for example, is constitutionally prohibited from interfering with your right to speak your mind or practice your religious beliefs. A positive right on the other hand requires government to take positive action, to provide you with a good or service. The Constitution is pretty quiet on what services government owes its people, which has led a lot of legal scholars to conclude that the United States really has no established tradition of positive rights. Zackin's book disagrees, arguing that there is a strong tradition of positive rights in the United States; legal scholars haven't found them because they have looked in the wrong place. She suggests that Americans actually have quite a lot of positive rights—for example, they have a right to a free public education. These positive rights, however, are not found in the U.S. Constitution but in state constitutions. State constitutions, in short, are where we find positive rights.

- **Williams, Robert F.** *The Law of American State Constitutions*. New York: Oxford University Press, 2009.

Williams is one of the most widely recognized scholars of state constitutional law, and this book is one of the most comprehensive and up-to-date scholarly analyses available of the nature and purpose of state constitutions. This work is notable not just for its overview of the historical development of state constitutions, their structure, and their legal implications but for staking out a strong “positivist” position on these documents. Essentially, Williams argues that state constitutions should not be viewed as mini-versions of the U.S. Constitution. Instead, each should be viewed as a unique text and interpreted—by scholars and judges—within that framework. This argument amounts to a strong rejection of the so-called common principles approach, which views and interprets state constitutions basically as a branch of common law—that is, a set of cases or precedents.

- **Krislov, Marvin, and Daniel Katz.** “Taking State Constitutions Seriously.” *Cornell Journal of Law and Public Policy* 71 (2008): 295–342.

This is a study of how state constitutions change. In comparison with the federal constitution, state constitutions generally have much less restrictive amendment processes, and even within individual states there may be multiple avenues to constitutional change. While noting the huge variation across states in these amendment processes, Krislov and Katz pay particular attention to direct democratic processes. Their analysis shows that such processes, in particular constitutional initiatives, have become a primary method of amending state constitutions. Yet even among states that allow ballot initiatives, there is substantial variation in the rules and procedures for passage of a constitutional initiative. This study suggests that those differences create different sets of incentives for groups to pursue constitutional change and that the rapid shifts in state constitutional content create particular challenges for the process of state-level judicial review.

- **Lupia, Arthur, Yanna Krupnikov, Adam Seth Levine, Spencer Piston, and Alexander Von Hagen-Jamar.** “Why State Constitutions Differ in Their Treatment of Same-Sex Marriage.” *Journal of Politics* 72 (2010): 1222–1235.

This is an interesting companion study to the Krislov and Katz article. This team of researchers examines state-level variation in attitudes toward same-sex marriage and constitutional outcomes. One of the surprising findings of their study is that attitudes correlate somewhat poorly with constitutional amendments on same-sex marriage. Public opinion regarding same-sex marriage does not differ greatly between states with constitutional amendments banning the practice and those without such amendments. The authors find that the differences that do exist are explained, at least in part, by the relative complexity of the rules and regulations associated with constitutional amendment. The fact that U.S. state constitutions differ in the legal status of same-sex marriage has less to do with attitudes on that topic in the states and much more to do with the institutional arrangements established by those constitutions to translate the will of the people into state law.