50. State Constitutions

Wisconsin Conservation Department

In every State there is a written constitution as the formal basis for the State government. Each State constitution establishes certain organs of government for the State, vests these organs with their powers, and denies either these organs or the entire State government certain other powers. Like the federal Constitution, these written constitutions of the States do not comprise an entire "constitution" or fundamental law. That is, in addition to its documentary constitution each State government rests upon legislative enactments, executive decrees, judicial rulings, and custom and habit. There are often great differences between the constitution of one State and that of another. However, upon close inspection many of these differences turn out to be superficial. The fact is that in their principal elements, State constitutions are all similar to one another; indeed, the

authors of State constitutions have not hesitated to copy each other's work.

GENERAL NATURE OF STATE CONSTITUTIONS

The powers of State governments

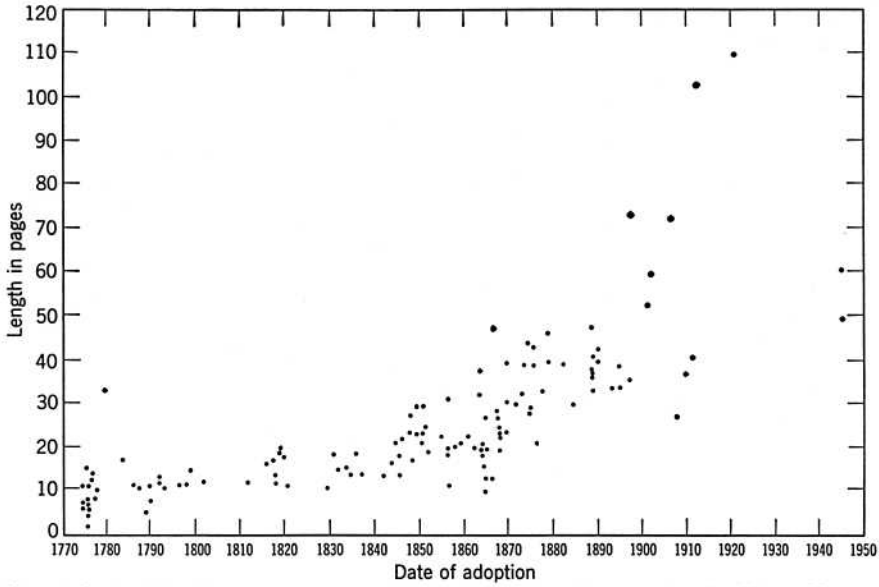
The general nature of State constitutions is based upon the type of powers that State governments possess and exercise. It should be remembered that according to the Tenth Amendment to the federal Constitution, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In other words, the federal government has only the powers specifically given it by the federal Constitution; the States and the people have all other powers. At many times and in many places this statement has been interpreted to mean that State governments possess all powers not denied them by either the federal Constitution or their own constitution. Consequently a substantial portion of a State constitution is negative, denying the State government certain powers.

Length of State constitutions

State constitutions are quite long. The shortest of all, that of Vermont, contains 8,419 words, about 2,000 more than the federal Constitution. The longest, that of Louisiana, has 184,053 words. The average of the forty-eight present constitutions is about 27,000 words, or four times as many as the federal text. It is notable that the recent constitutions tend to be longer than those written a century ago; Figure 125 shows how the length of modern State constitutions surpasses that of those a hundred years old and more. However, the New Jersey constitution, written in 1947, has but 12,500 words.

There are several causes underlying the length of State constitutions. One is the increased number of services that States have been called upon to render. In the main, these are the services that the State carries out under its police power. Another cause is that influential citizens often lack confidence in their legislatures. In principle, at least, the legislature is the ultimate repository of the reserved powers of the State; more than any other branch of the State government, it has been the one that seemed to need restraint. Too, many State legislatures have shown themselves easily corrupted or readily managed by a pressure group for the satisfaction of the particular ends of the group. Therefore, certain types of legislative activity have been banned. Also, the constitutions frequently give precise form and function to many of the administrative agencies of the State, so that the legislature—which under ordinary circumstances would create these agencies—is deprived of the power of overseeing the administration of the laws that it enacts. A final cause for the length of State constitutions is the wish of some interests to guarantee that some portion of the State government

The Capitol Building, Madison, Wisconsin. An example of traditional capitol design, much like the national Capitol in style and mood.



Alfred de Grazia, "State Constitutions—Are They Growing Longer?", State Government, April, 1954, p. 82

Figure 125. Increasing Length of State Constitutions. The relation between the length and date of adoption of all American State constitutions. The unit of length was set at the approximate page size in Francis N. Thorpe's collection, *The Federal and State Constitutions . . .*, Washington, 1909. (Each dot represents the date of adoption and the length of a single state's constitution.)

shall have a certain specified power. These interests take such steps as precautions against a possible ruling by a State court that the silence of the constitution regarding a power in effect denies it to the government.

THE CONTENTS OF STATE CONSTITUTIONS

State constitutions so differ from one another in particular matters that any detailed treatment of them would be far longer than necessary for this text. However, these constitutions resemble each other sufficiently in general outline that their contents may be summarized in a brief discussion. Nonetheless, it should be borne in mind that what is being described is a typical constitution, not any particular one, and that some of the following statements, although true for most State constitutions, are not true for every one.

Preamble

A State constitution usually opens with a preamble, which is a brief doctrinal foreword setting forth the presumed reasons for which the constitution was drafted and adopted, and including some mention of the Supreme Being.

Protections of rights

Every State constitution possesses a "bill of rights" or "declaration of rights." Such protections of rights have appeared necessary in spite of the

federal Bill of Rights, for there are many ways in which a State may abuse its powers against which the federal Bill of Rights offers no protection. The State bills and declarations provide about the same guarantees against State governments as the federal Bill of Rights provides against federal authorities. They protect such political rights as the freedom of religion, freedom of speech and the press, and freedom of assembly. State constitutions also assure a number of protections to persons charged with a crime, such as a guarantee of a speedy and public trial before an impartial jury, a ban on *ex post facto* laws, and a prohibition on cruel and unusual punishments. Finally, State constitutions guarantee property rights by insisting on due compensation in the exercise of eminent domain and by forbidding that any person be deprived of property without due process of law. It may be noted that some States in their catalogues of protections include material that is not law but doctrine; that is, it is no more enforceable in a court than the Preamble to the federal Constitution is. For example, according to the Constitution of Maryland (Article I): "That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient."

Suffrage and elections

State constitutions have considerable portions dealing with the suffrage and elections. They specify the various qualifications for the electorate, including such matters as age, residence, and citizenship. They also arrange for all sorts of elections, going so far as to set the dates for particular elections and to establish the local administrative machinery for the balloting.

Organs of government

State constitutions provide for the organs of the State government. First among these organs is the legislature; the constitution may detail the characteristics of the legislature, including not only the qualifications and terms of the members but also their salaries and the boundaries of their districts. Next, the constitution sets forth the office of the Governor, his qualifications and term of office, and sometimes his salary. It also, at this point or some other, may create the other executive offices of the State, such as the attorney general and the secretary of state, arranging for their selection and terms of office. Finally, the constitution sets up the judiciary, with its qualifications, terms of office, and means of selection. Together with the clauses establishing these organs of government, the constitution may contain other provisions endowing them with some of their powers.

Local government

State constitutions include considerable portions devoted to the establishment and regulation of the various types of local government, since the State exercises many of its powers with these governments as its agencies. This section may be very detailed, containing such specific matters as the

boundaries of the individual counties and the definitions of the classes into which cities and counties will fall. This section moreover is apt to include whatever grants of constitutional home rule that the cities and counties of the State enjoy.

Taxation and debt

The State constitutions set forth the power of the State government to levy taxes and to incur debt. Sometimes the constitution forbids the State to levy certain types of taxes, and to incur a debt beyond a specified sum of money.

Powers of government

The largest part of the State constitution is devoted to an enumeration of the general powers of the State government. Often this enumeration is found partially in the section on the organs of State government and partially in a rather disorganized group of sections that deal solely with powers. At one point or the other, the constitution gives the State its vast powers over the welfare of the citizens, including such matters as public education; public health; assistance for dependent children, the blind, and the aged; the prevention and punishment of crime, along with the State prison and correctional system; and similar functions.

The constitution also empowers the State to regulate labor, with respect to such questions as the hours of work; the supervision of working conditions in mines and factories; and compensation for unemployment, industrial injuries, and illness. Another section deals with agriculture and the conservation of natural resources. One of the weightiest sections gives the State its controls over business; it deals with the chartering of private corporations and the restrictions upon both corporations chartered in the State and those chartered elsewhere. A related passage governs such State aids for business and the general population as public highways and other State enterprises. Finally, the constitution grants the State certain military powers.

AMENDMENT AND REVISION

A final portion of the State constitution provides means for amending and revising it. This part of the constitution, along with its effects upon the document and its connection with the whole political process, are so important that their discussion is reserved for a separate heading in this chapter. Like the federal Constitution, State constitutions evolve through both formal and informal means. There are three formal methods usually appearing in State constitutions whereby the constitution may be amended or revised: (1) legislative proposal; (2) popular initiative; and (3) constitutional convention. There is moreover a fourth formal means that is not specifically authorized by any State constitution but that has always been accepted by the courts: constitutional commission. Usually the first two of these methods are held to result in *amendment,* and the third and fourth in *revision.* Table 28 shows what methods the constitution in each State provides.

TABLE 28. WAYS PROVIDED BY STATE CONSTITUTIONS FOR THEIR AMENDMENT AND REVISION[1]

State	Legislative Proposal	Popular Initiative	Constitutional Convention
Alabama	x	—	x
Arizona	x	x	x
Arkansas	x	x	—
California	x	x	x
Colorado	x	x	x
Connecticut	x	—	—
Delaware	x	—	x
Florida	x	—	x
Georgia	x	—	x
Idaho	x	—	x
Illinois	x	—	x
Indiana	x	—	—
Iowa	x	—	x
Kansas	x	—	x
Kentucky	x	—	x
Louisiana	x	—	—
Maine	x	—	x
Maryland	x	—	x
Massachusetts	x	x	—
Michigan	x	x	x
Minnesota	x	—	x
Mississippi	x	—	—
Missouri	x	x	x
Montana	x	—	x
Nebraska	x	x	x
Nevada	x	x	x
New Hampshire	—	—	x
New Jersey	x	—	—
New Mexico	x	—	x
New York	x	—	x
North Carolina	x	—	x
North Dakota	x	x	—
Ohio	x	x	x
Oklahoma	x	x	x
Oregon	x	x	x
Pennsylvania	x	—	—
Rhode Island	x	—	—
South Carolina	x	—	x
South Dakota	x	—	x
Tennessee	x	—	x
Texas	x	—	—
Utah	x	—	x
Vermont	x	—	—
Virginia	x	—	x
Washington	x	—	x
West Virginia	x	—	x
Wisconsin	x	—	x
Wyoming	x	—	x

[1] Adapted from Albert L. Sturm, *Methods of State Constitutional Reforms* (Ann Arbor: University of Michigan Press, 1954), p. 20.

Legislative proposal

Amendment by legislative proposal is inaugurated by the State legislature, which proposes an amendment to the constitution. This way of initiating constitutional amendment exists in every State save New Hampshire, where the constitution may be amended only through a convention. Ordinarily, the legislative proposal must be submitted to the people for their approval; only in Delaware may the legislature alone amend the constitution. Generally the legislature must adopt the proposal by a simple majority, a three-fifths majority, or a two-thirds majority of the elected membership. In a number of States the legislature must vote on the proposal twice, once in each of two legislative sessions; in a few of these, a legislative election must fall between the two sessions. So far as the popular vote is concerned, the constitutions of thirty-two States require only a majority of those voting on the proposal; in four more States, the courts have interpreted the constitutional provision to mean a majority of those voting on the proposal. In a few States the constitution requires that a majority of all those taking part in the election approve of the proposed amendment; inasmuch as fewer people vote on proposed amendments than on candidates, amending the constitution of one of these States is quite difficult.

Popular initiative

Amendment by popular initiative is inaugurated by the people, who through petition propose an amendment. This means of amendment exists in thirteen States, all but Massachusetts, Michigan, and Ohio being west of the Mississippi. In every State the initiative begins with the drafting of the proposed constitutional amendment by a band of interested citizens. This proposition is then placed upon petitions which are circulated among the people for their signature. The petitions must be signed either by a specified percentage of the registered voters or by a stated number of voters. In some States the signatures must be obtained from voters rather equitably distributed about the area of the State. When the stipulated percentage, or number, of voters have signed the petitions, the proposed amendment is submitted to the people at an election, for their approval or rejection. Usually a simple majority of the votes cast suffices to ratify the amendment. It is noteworthy that in the States in which amendments may be proposed by the popular initiative, more amendments are proposed by legislative action than by the initiative; furthermore, a larger proportion of those proposed by the legislature is ratified by the voters.

Constitutional conventions

Constitutional conventions are designed chiefly for bringing about major revisions in existing constitutions, or for drafting new constitutons. They are the oldest of the three formal processes in the evolution of State constitutions, dating from the eighteenth century. In thirty-six States the constitution specifically empowers the people to hold a convention; in the other

twelve it has been universally acknowledged that the people have this right.

Summoning the Convention: Revision of the present constitution, or the drafting of a new constitution, by means of a constitutional convention requires a number of stages. First, in most States the legislature must submit to the people the proposal that a convention be summoned. In most States the legislature makes this proposal solely on its own initiative—formally, at least, although it may be under great extra-legal pressure from outside interests. In eight States, however, it is obliged to make this proposal periodically, at intervals ranging from every seven years in New Hampshire to every twenty years in each of five States. The majority of the legislative vote needed to submit the proposal differs from State to State, or may not even be specified in the constitution. Now the people are to vote upon the proposal; again, by majorities that vary from State to State, the voters decide whether or not a convention is to meet. If the proposal is accepted by the voters, the legislature must then enact measures to provide for the convention.

Convention Organization and Functioning: State constitutional conventions in many respects are similar to the Philadelphia Convention of 1787. Where they meet, how the delegates are chosen, how many delegates there shall be, how the convention shall be organized, and what the convention may do, are matters that are sometimes set forth in the State constitution and sometimes arranged by the legislature. For example, if it has the authority to do so, the legislature may provide that delegates to the convention shall be apportioned throughout the State in the same manner as the State legislators are; with this arrangement, the various interests of the State will be represented with about the same relative influence in the convention that they already have in the legislature. The delegates to a convention are chosen by the voters. Once their members have been elected, most conventions organize themselves much like a legislative body, with presiding officers, rules, and committees.

The purpose of a convention is either to revise the constitution or to draft a new one; yet how full its power is toward either of these ends has been a matter of frequent dispute. Sometimes the legislature, in summoning the convention, has forbidden its members to deal with certain phases of government, such as the apportionment of the legislature itself. The convention is an arena in which various interests tug and haul. Some interests will want no changes at all; others will want differing changes, their nature and extent depending upon the wants of the interests concerned. In any event, the convention proceeds until it either drafts a new constitution, prepares amendments for the current constitution, or—which is quite unlikely—adjourns without having reached a conclusion.

Popular Approval: If the convention succeeds in producing a new constitution, or major revisions for the constitution in force, the results of its work are almost certain to be offered to the people for their approval in an election. At present the constitutions of only a few States require the

voters to approve the work of a convention. However, where there are no constitutional provisions, it may be assumed that any new constitution is apt to contain a provision specifying the majority of the popular vote that will be necessary to ratify it.

Constitutional commissions

The constitutional commission as an instrument for amending or revising a State constitution differs from all other instruments in that it does not repose on direct constitutional authority. In most cases the commission is a temporary body established by an act of the State legislature, to recommend changes in the constitution; hence the typical commission is an implement of the legislature. On the other hand, the legislature may assign the undertaking to a permanent body, as when in 1946 in Louisiana the State assembly instructed the Louisiana State Law Institute to prepare a draft for a new constitution. Occasionally, as in Kentucky in 1949, the commission may be established as an advisory body by the Governor alone. The constitutional commission is not authorized to submit its proposals in a formal manner directly to the electorate; they must be filtered through the legislature. On the other hand, the constitutional commission may bring substantial pressure upon the legislature if by skillful publicity work it can convince the voters that its recommendations are sound.

The typical commission is appointed by the Governor and the legislature; sometimes, however, either the Governor alone, or the legislature alone, may do the selecting. Occasionally the State judiciary shares in naming commission personnel. The size of commission membership has ranged from three to thirty-eight. Sometimes the members come solely from the legislature; sometimes they come from all three branches of the government. Generally, lawyers have made up a large proportion of the members; businessmen, laborers, and social studies specialists have constituted a small minority.

To carry on its principal tasks the commission usually subdivides itself into committees, each to handle one particular phase of the constitution. Sometimes these committees may include persons not members of the commission. Apparently committees do not often enjoy the assistance of large research staffs; generally they must rely upon regular State agencies for the bulk of their information. Eventually, when each of the committees has finished studying the topic assigned to it, the entire commission gathers and discusses, sometimes in executive sessions, the conclusions of each of the committees. From these sessions the commission drafts its final recommendations, which commonly take the form either of a proposed new constitution or suggested amendments to the present constitution. It is a rare commission that does not submit some propositions for change, since such a body is not apt to be organized unless pressure for change exists.

QUESTIONS AND PROBLEMS

1. Why are State constitutions on the average longer than the federal Constitution?

2. What are the several parts of the typical State constitution?

3. What are the formal methods of amending constitutions in use among the States?

4. How is the constitution of your home State amended and revised? Is this different from the methods used in most States?

5. What are the most frequently used methods of amending State constitutions? What method is least used?

6. Describe the purpose and operations of constitutional commissions. Do you think that their use will increase in the next generation? Why?