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STATE CONSTITUTIONAL LAW: A TWENTY-FIVE YEAR SUMMARY

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Although the United States is usually regarded as a young country, its history stretches back over several centuries. Several states have recently held Tercentenary Celebrations, North Carolina and Rhode Island in 1963, and New Jersey in 1964, while Maryland in 1963 noted its 329th anniversary. More exactly, however, the present constitutions date, not from the founding of the colonies but from the Revolutionary period and the establishment of the present governments.

Thus the American people have been in the business of writing, amending, and revising state constitutions for almost 200 years. It all began when, pursuant to a resolution adopted by the Continental Congress on May 15, 1776, the people of the various states began to prepare constitutions, in anticipation of their new status as independent states. There are some interesting points regarding these original constitutions.

In most matters of government and law, the people tended to follow the English precedents. But Britain did not have and never has had a written constitution in the sense in which American constitutions have been written. The adoption of these original constitutions marked the beginning of what has developed into a firm American commitment to the idea of the written constitution.

It would be incorrect to regard these documents as "new," for in most respects, they were not. They consisted of a combination of two elements: a summary of the political ideas that then prevailed, and a carry-over of many of the provisions of the colonial charters, pro-

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prietary grants and other instruments under which the colonies had been governed. The constitutions, then, represented no sharp break with the past. Most of the new constitutions were promptly framed and adopted, some with considerable change in the colonial charters, others with very little. A few states continued to function under their old charters for a number of years—Connecticut until 1819, Rhode Island until 1842.

Theoretically these documents, conceived as one aspect of what Harvey Wheeler calls participational democracy, were not expected to be long enduring. On the contrary, it was Jefferson's belief that governments tended automatically to grow away from the needs and wishes of the people. Therefore these constitutions should be revised often; a revolution, he thought, should occur every generation. But in practice revisions have not been frequent. In all these years, Massachusetts, although it has had several conventions, has never adopted a revised constitution. The average life of a state constitution, formerly regarded as approximately a generation, has tended to increase. The revisions that have taken place have often served as the vehicle through which the tenets of participational democracy was institutionalized, but they have seldom been even mildly revolutionary. Even in those jurisdictions in which conventions have been held, few of them have actually resulted in thorough and extensive revision.

State constitutions have not only tended to have a longer life, but to become longer.¹ This development arises out of several considerations. Modest increases have grown out of new needs and changing conditions, reflected in piecemeal amendments, extensive increases out of the tendency of pressure groups to seek protection for their pet ideas and projects by giving them constitutional status, resulting in the masses of legislative detail which encumber so many of our constitutions.²

With these few observations on the general background of constitution making at the state level, attention is now directed to the developments of the last quarter of a century—including procedural questions in constitutional revision, substantive changes, and the prospects for constitutional change during the next few years.

1. De Grazia, Alfred. *State Constitutions—Are They Growing Longer?* *State Government*, April 1954, pp. 82-83.

2. For a discussion of this in one state, see Owen, Kimbrough, *The Need for Constitutional Revision in Louisiana*. *Louisiana Law Review*, November 1947, pp. 1-104.

I. PROCEDURAL MATTERS

With this long experience in constitution making, one would expect that an established procedure or methodology of constitution making and a good deal of skill in using it might have been developed. This clearly does not appear to be the case, as the discussion which follows will show. The states have simultaneously developed both an extraordinary variety of procedures and a resistance to using them that is nearly as great. Perhaps this is because the whole process appears to be somewhat distasteful and something to be postponed as long as possible, or avoided altogether, that scholars in the field of government and law have given such scant attention to public law at the state level.³

Constitutional revision was formerly accomplished by conventions composed of popularly elected delegates, and some still are. But in this mid-Twentieth Century period, they tend more and more to be accomplished by appointed commissions composed of community leaders and experts rather than by popularly chosen delegates, whose purpose, Wheeler contends, "is to dismantle the archaic institutional remains of participational democracy. Their theme is to strengthen the executive, give him a larger staff and more authority over administrative agencies, and firm up his hand against legislators."⁴

Setting the Stage for Constitutional Revision

For a variety of reasons, constitutional revision has come to be a time-consuming, costly and exceedingly difficult undertaking. Since the public seems to have little idea of what a constitution is, why it exists, how its provisions affect their daily lives, why it needs changing or how to change it, the first step in achieving constitutional revision is to create an awareness of need on the part of the public. Public demand for change is essential before the cumbersome machinery of revision can be put in motion. Such a demand can be developed only by means of a campaign of education, and this in turn, can be effectively conducted only after a great deal of preparatory work has been done.

The usual procedure is to establish a study commission which can serve the two-fold purpose of providing factual information for the campaign—information which can be used again later when and if the campaign succeeds in bringing a constitutional convention into ex-

3. See Mitau, G. Theodore. What Has Happened to the Study of State Public Law by Political Scientists? *Journal of Public Law*, v. 14, No. 1, 1965, pp. 90-104.

4. Wheeler, Harvey, *The Rise and Fall of Political Democracy*, p. 16. Center for the Study of Democratic Institutions, Santa Barbara, 1966.

istence. Such a commission can be appointed by the governor on his own initiative, or as a result of legislative action, authorizing and directing that such a commission be established. Or it can come about under private initiative, and be privately financed. This procedure is sometimes necessary when the legislature refuses or at least fails to provide the necessary funds.

When, in time, the information has been gathered and used, and it is judged that the time is right, plans may be made for a statewide referendum on the question of holding a convention. This brings the supporters of revision face to face with an often hostile legislature and the almost unbelievable tangle of legal technicalities that has been established in many states for the purpose of making constitutional revision difficult if not impossible.⁵ To begin with, legislatures almost invariably regard revision with indifference or apathy, if they do not actively oppose it. It is much easier and politically far safer to support the *status quo*. This attitude on the part of the legislature is often reinforced by built-in barriers in the state constitution.

While in most states the legislature or the legislature and a referendum can bring a constitutional convention into existence, there are significant exceptions. In nine states a majority vote of the legislature and the referendum are sufficient, but Nebraska requires a three-fifths vote and the referendum. Seventeen states require a vote of two-thirds and the referendum, but New Mexico requires a three-fourths vote plus the referendum. A majority vote of two successive legislatures plus a referendum is necessary in Kentucky, and a convention may be brought about by initiative petition in Oregon. It is somewhat easier to obtain favorable legislative action if the state constitution provides, as those of eleven states now do, for a periodic submission of this question to the voters.⁶

In some jurisdictions, however, it has been found that it was just not possible, under existing constitutional provisions, to bring the question

5. See Hindman, Wilbert L., Road-Blocks to Conventions. *National Municipal Review*, March 1948, pp. 129-132, 144, in which legal, political and psychological barriers are discussed.

6. Such a submission is mandatory every seven years in New Hampshire, every ten years in Iowa, every sixteen years in Michigan, and every twenty years in Maryland, Missouri, New York, Ohio, and Oklahoma. The Model State Constitution specifies fifteen years.

of revision to a vote. Best known of these was Illinois, where a prolonged campaign was necessary to secure the adoption of a Gateway Amendment before further effort for constitutional revision could be undertaken. The State of Connecticut had a similar experience in 1956-1957. But winning a majority in the referendum, if one can succeed in getting a referendum authorized, may not be enough. In a number of states, the constitution requires not merely a majority of those voting on the question but a majority of those voting in the election.⁷ This has been a stumbling block in many states on many occasions. In each of these instances, noncontroversial and nonpartisan proposals with no declared opposition failed to win approval because the blank ballots were sufficient to prevent a majority of the total votes cast at the election. Even when this obstacle has been overcome, still another battle with the legislature may be in store.

Not content with having employed every conceivable dilatory tactic to delay if not actually to prevent a referendum, the legislative leaders may decide to ignore or to defy the expressed wishes of a majority of the voters. The point is that a popular majority in favor of holding a convention does not for one moment mean that a convention will be held, as experience in several states has clearly demonstrated. Legislation must be adopted providing for the holding of the convention, specifying its size and composition, its time and place of meeting, its organization and procedure, and providing funds to pay its expenses. Until this legislation is enacted, there can be no convention. The whole process can be expedited by selecting delegates at the same time the referendum is held, but this procedure can be used only on those rare occasions when the supporters of revision have a friendly legislature. When this procedure can be used, the election of the convention delegates becomes valid and effective only when the enabling act for the convention has been passed.

But the present concern is with those instances in which, for one reason or another, the legislation is never passed. The people of Iowa voted for a convention in 1920. The legislature never did provide for the holding of the convention,⁸ now it is assumed that a new mandate

7. Around 1940 in Arkansas, Illinois, Indiana, and Michigan; a few years later in Alabama, Arizona, New York, Oklahoma, Oregon, Tennessee, Virginia, West Virginia, and Wisconsin. See the *Book of the States, 1943-1944*, p. 108. This occurred in Minnesota on two different occasions.

8. Professor Herman H. Trachsel describes this experience: "The vote of the people was 279,652 for and 221,763 against calling a convention. On January 20, 1921, a bill

from the people would be required. The same thing happened in California in 1934, following a favorable vote on an initiated proposal for a convention, and again in 1945-1946, and in Maryland after a favorable popular vote in 1950. In the latter case, the two houses became involved in a hassle over the terms of the convention legislation. The leaders being unable to come to an agreement, the 1951 session was permitted to expire without any action being taken. Ever since, the fight for constitutional revision has continued in this state. A study commission was created in 1965. A new referendum is scheduled for the Fall of 1966, so that, barring a repetition of past mishaps, a constitutional convention may be held in Maryland in 1967.

All of which may lead one to observe that the advocate of constitutional reform in an American state should be endowed with the patience of Job and the sense of time of a geologist. This may not be an absolute requirement, but it is almost certain to be helpful.

Available Procedures

If the American people had been even half as effective in up-dating their constitutions as they have been in devising procedures for doing the job or to prevent its being done, every single one of the fifty state constitutions would be today in shipshape condition. The variety of available procedures is truly astonishing, and it may well be that their very abundance and variety impedes progress. There are relatively few people in a position to know the advantages and disadvantages of each different procedure and capable of evaluating them. The very multiplicity of procedures affords an opportunity for each to enlist its supporters, and for conflict among them.⁹

was introduced into the House of Representatives making provision 'for a convention to revise and amend the constitution, naming the number of delegates and districts;' This bill passed the House on March 15 and was messaged to the Senate the following day. On March 30, it passed the Senate with amendments which the House refused to accept. A Conference Committee was appointed; but the House rejected its report on April 2, which was the last day of the session. Thus the General Assembly adjourned without making any provision for a constitutional convention.

In support of the position taken by the General Assembly, some of the members and others insisted that there was no popular demand for a revision of the constitution. One representative, however, did not believe the General Assembly 'should override the wishes of the people.' Another said 'the people expressed a wish for the convention and it is for the Assembly to make necessary machinery for it.' Every ten years the question is submitted to the voters on a separate ballot."

9. See Sturm, Albert L., *Methods of State Constitutional Reform*. University of Michigan Press, Ann Arbor, 1954.

The principal methods, of course, are the constitutional convention, the constitutional commission, and the piecemeal amending procedure. Any of these methods can be used by itself or in combination with other devices or procedures. Then, in addition, there are at least a half dozen minor methods, including editorial revision and codification, initiative and referendum, legislative revision, and draft constitutions prepared by law institutes, bar associations, or other groups. Attention is now directed to an analysis of recent experience with these several devices.

Constitutional Conventions. A constitutional convention "is a rather unique and unusual American institution." These are the words of Professor James K. Pollock, distinguished political scientist and member of the recent Michigan Constitutional Convention, who continues that it is "an institution utilized upon occasion by individual states to bring their machinery of government into accord with the conditions and circumstances of the time."¹⁰ This is a good statement of the purpose of a convention.

One's attitude toward the constitutional convention depends to a large extent upon his general orientation and point of view. To those who understand the need for constitutional revision and modernization, and their importance, the constitutional convention is regarded as the best and most satisfactory means of accomplishing this objective. All but twelve states make specific provision for conventions, and even in these their use has been upheld by judicial decision. To those who, for whatever reasons, are opposed to constitutional revision to begin with, the convention is the most feared and hated of the various procedures and techniques available for constitutional change. Most of all, they fear that if the whole gamut of constitutional issues is opened up for discussion and review, as they are in an unlimited convention, things may get out of hand, so to speak, and some benefit, exemption or privilege which they presently enjoy may be either diminished or abolished. These opponents, however, forget that constitutional conventions tend to be far more conservative than radical.

So the opponents of constitutional revision normally tend strongly to oppose the convention method. If they lose out on this issue, their strategy is to permit as little revision as possible. And, in practice,

10. *Making Michigan's New Constitution, 1961-1962*, pp. 1-2. George Wahr Publishing Company, Ann Arbor, 1962.

this means putting up a fight for a limited convention. At this point, it becomes essential to distinguish clearly between a limited constitutional convention, on the one hand, and an open or unrestricted convention on the other.

Limited constitutional conventions, while not unknown in the past, were never widely used prior to 1947, when the backers of constitutional revision in New Jersey were forced into making the difficult choice between having a convention from which the issue of legislative apportionment was excluded from consideration by a strongly worded pledge, and having no convention at all. The convention backers chose the first of these alternatives. And so developed the precedent from which the recent trend toward limited conventions has developed.

This development has occurred in spite of grave doubts regarding the validity of the limited convention concept. It was determined in the courts long ago that the powers of a constitutional convention when acting with the established sphere of such a body, are complete and plenary. Hence a convention is not bound by legislative attempts to limit or prescribe the scope of its activities. The supporters of revision in New Jersey knew this, but they decided to go along with the limitation, not because the limitation had any legal effect—which it did not—but because the charge of bad faith that would certainly have been made might work possibly irreparable damage to the cause of constitutional revision in the state. The leaders have regretted ever since, not only the unhappy alternatives that confronted them, but the seemingly lasting effects of the choice they made.

The limited convention device has since been used repeatedly to deal with special situations, more or less of an emergency character, but unfortunately also, opponents of general constitutional revision have seized upon it as a clever device for preventing the general revision and modernization that is sorely needed in so many of the states.

A number of specific illustrations of both types may be cited. Emergency situations developed in Virginia in 1945-1946 with regard to absentee voting by citizens in the Armed Services. They developed in North Carolina and Virginia—in fact in the whole Southern Region—regarding school integration after the Supreme Court decision in *Brown v. Topeka*. In New Jersey and other states, this device has been used, or its use is being planned in an effort to solve apportionment problems. In all of these instances, and doubtless in many others, limited constitutional conventions were hurriedly brought into being to deal with

the situation. These uses of the limited convention device in emergency situations are certainly understandable, and in some instances, probably justifiable.

This cannot be said, however, when the device is used to prevent general revision where this is clearly needed. Perhaps the best illustration of this is found in Tennessee which has held two limited constitutional conventions in the last decade. The first, the convention of 1952-1953, was limited to eight clearly specified subjects. The convention met, considered these subjects and no others, and proposed constitutional amendments regarding them. The amendments were submitted to the voters and approved. In this sense, Tennessee's first limited convention was a success. It brought about remedial action with regard to a few matters, and broke down the idea that the Nation's only unamended constitution could not be amended. It was a failure in that it prevented the broad review and general discussion of other provisions in the constitution also in need of modernization and change. Apparently fascinated by their apparent success, another limited convention was called a few years later, in 1959, to deal with three very minor matters, only one of which was acted upon. It was generally agreed that a constitutional convention should never have been called to consider such a meagre agenda of insignificant matters. In 1960, the Kentucky electorate voted against a convention that could have been limited to twelve important subjects.

This is not the place to present an encyclopedic account of the constitutional conventions that have been held in the last few decades. While the Twentieth Century cannot be characterized as a period of great activity or of great distinction in the making and remaking of state constitutions, there have been a good many conventions. Some of these hold far greater interest and importance for the student of public law than do others. In order to give a broad view of the important characteristics of a selected group of conventions, a summary table regarding them is presented on pages 44-45. In this table, comparative data on such questions as size, type (limited or unlimited), place of meeting, committee structure (both temporary and permanent committees), size of staff, and duration are presented. Whatever proposals for change may emerge from such bodies must be submitted to the electorate for their approval or rejection.

Constitutional Commissions. Constitutional commissions have come to be widely used for a variety of reasons, and in many different ways,

as a part of the process of constitutional revision. They may serve as a means of spotlighting major issues and educating the voters, as a preparatory body for a convention, or they may themselves undertake and carry through the task of constitutional revision. Only Georgia (1943) and Virginia (1929) have achieved a complete revision by this method. The popularity of commissions in mid-Twentieth Century appears to have been inspired largely by the success in these two states. The Oregon Commission (1961) drafted a new constitution, but it was not adopted.

Although many advantages are claimed for the commission device, it also has important disadvantages. Its advantages are reputed to be that, being a small and prestigious body with a specific and important task to perform in a limited time, it can attract the most able men. It is far less costly than a convention. Most important of all, in the eyes of many, it can be used as a substitute for a convention. Professors Rich and Sturm are among the most careful students of the commission device. The former notes that few of these bodies measure up to expectations, that the members are subject to the same prejudices and political pressures as are the members of a legislature or a convention, and that they have "one inherent and fatal weakness in that their every act is measured in terms of what they believe the legislature will accept." The fact that they must report to the legislature may in itself constitute an almost insurmountable barrier to thoroughgoing revision.¹¹

Since the reporting on such matters is so casual and disorganized, it is sometimes difficult to assemble complete and accurate information regarding them on such a simple matter as the number created in any given period of time. Each biennial issue of *The Book of the States* reports briefly on the work of several. In the 1966-1967 volume, recently released, commissions are noted in Georgia, Idaho, Kentucky, Nebraska, North Dakota and Pennsylvania during the preceding biennium. Professor Sturm reports that, on the basis of a recent survey, there has been a considerably increasing use of this device during the past fifteen years.¹² On this point, he says:

11. Rich, Bennett M., Convention or Commission? *National Municipal Review*, March 1948, pp. 133-139. Thoroughly revised and updated, this article appears as a chapter in a symposium edited by the author, *Major Problems in State Constitutional Revision*. Public Administration Service, Chicago, 1960.

12. Sturm, Albert L., and Craig, James B., Jr., State Constitutional Commissions: Fifteen Years of Increasing Use. *State Government*, v. 39, Winter 1966, pp. 56-63.

Since midcentury four commissions have been established in each of two states, three each in two states, two each in five states, and one in each of the remaining fourteen states.

He regards the increasing recent use of constitutional commissions since 1950, and especially in the decade of the Sixties as particularly significant:

Of the thirty-eight commissions established in the 1950-1965 period, three were created in the first five years (1950-1954), eleven during the next five years (1955-1959), eighteen in the third five-year period (1960-1964), and six in 1965 alone.

Some of these were established by statute, some by executive order, others by legislative resolution. A summary of some basic information regarding commissions established in twelve selected states is included in Table II, pages 46-47. These twelve states account for approximately one-third of the thirty-eight commissions created since 1950. These particular states and commissions were chosen because, for one reason or another, they were thought to be important or significant examples of the commission device at work.

One needs always to keep in mind the fact that few commissions actually do the revising job themselves, serving rather than as one phase of a process which may extend over a period of many years. They may be instructed merely to explore the question as to whether revision is actually needed, and if they so conclude, to make recommendations. Or they may stage an educational campaign to promote revision, or engage in preparation for a convention that they hope will be created. Their role in the revision process is rarely a simple one, and it shows no tendency toward being standardized.

Piecemeal Amending Procedure. Among the remaining methods to be considered here are revision through piecemeal amendment or by acceptance of a draft constitution prepared by a law institute, bar association or other responsible organization. Actually, Pennsylvania has made some progress in what may turn out to be a successful venture in constitution making through a combination of these two devices. It has often been urged that a state constitution could be kept up-to-date by use of the piecemeal amending procedure. Such an argument sounds plausible enough and, it must be admitted that this was the original

intent when state legislatures were authorized to submit proposed amendments to the voters for their approval or rejection. But in practice, this procedure has never been successful; in fact, it may be argued that it has been more of a hindrance than a help in keeping a state constitution well ordered, modern and up-to-date. A few states have claimed that they were doing this, but an examination of their constitutions reveals little to substantiate their claims.¹³

Just as Pennsylvania has tried to use the piecemeal amending procedure as a means of securing adoption of an article by article draft prepared by the state bar association, California is using this procedure as a means of securing adoption of an article by article revision which is the work of the Constitution Revision Commission, created by the legislature in 1964. A report issued in February 1966 presented the results of its work on seven articles; it was assumed that by October 1, 1966, when the life of the Commission expired, it would have completed its work on the remaining articles of the constitution¹⁴ as it did.

Generally, however, the piecemeal amending procedure's fragmentary approach to constitutional problems has not demonstrated that it possesses much fitness for dealing with such fundamental and highly complicated problems as streamlining the organization and procedures of the three branches of government, of the tax and fiscal system and the system for constitutional revision itself—all of which must be effectively dealt with if constitutional modernization is going to be anything more than an idle dream.

Other Procedures and Devices

Many states have improvised procedures and devices for revising their constitutions. Most of these owe their origin to a desire to avoid the "dangers" of a constitutional convention. One such device is editorial

13. See discussion of the concept of continuous revision below, and the Gardner article on North Carolina, therein cited.

14. *Proposed Revision of the California Constitution*. San Francisco, February 1966. Among recent studies of state experience with the use of the piecemeal amending procedure, see the author's *Major Problems in State Constitutional Revision*, Chapter 7. Public Administration Service, Chicago, 1960; Dickson, David F., *Proposed Amendments to the Florida Constitution of 1885*. Institute of Governmental Research, Florida State University. Tallahassee, May 1966; Folmar, Richard H., *Piecemeal Amendment of the New Mexico Constitution, 1911 to 1964*, Third Edition. New Mexico Legislative Council Service, Santa Fe, May 1965.

revision and codification—a chore which may be assigned to the state supreme court. This cannot be regarded as, and should not be confused with, *bona fide* constitutional revision. As a matter of fact, any real revision is specifically prohibited by a mandate that no changes in substance shall be made. Thus this procedure becomes in practice a sort of tidying up operation, useful in bringing some semblance of order into an ancient document grown long and confusing through the addition of multitudes of amendments. This procedure has been used with some degree of success in several of the New England States—Massachusetts in 1919, Maine in 1952-1953, and Connecticut in 1953. A new proposal of this type is now pending in Massachusetts.¹⁵ These “new constitutions” were really not new at all, but merely the earlier constitutions in a better ordered and more usable form.

In fourteen states, the people may bring about a constitutional amendment through the initiative procedure.¹⁶ Although this device has been little used, some illustrations may be cited. In 1946, the voters of Michigan used it to accomplish a diversion of sales tax revenues to school districts and cities. In 1948, it was used in California to earmark revenues for old age assistance. The voters of Oregon in 1952 and of Washington in 1956 used it to effect a solution of their apportionment problems. The victories attained were in both instances short-lived because the legislatures promptly proceeded to emasculate the amendments, and were upheld by the courts in so doing.

The legislature may, although fortunately it rarely does take upon itself the task of revising the constitution. The word “fortunately” was used here advisedly because there is good reason for serious doubts regarding the propriety of this procedure. It is not a new procedure. During its history as a state, South Carolina has had five constitutional conventions and has been governed by seven constitutions, two of which were written by the General Assembly.¹⁷ At least four states are now or have been experimenting with this device in recent years: California, Florida, New Jersey and Oregon. For quite different reasons, each of these experiences has been unique. The California experi-

15. See Legislative Research Council, *Report Relative to Constitutional Revision Procedures*. Senate Report No. 845, Boston, March 1966.

16. These are: Arizona, Arkansas, California, Colorado, Idaho, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma and Oregon.

17. See Larson, James E., *Constitutional Revision*. *University of South Carolina Governmental Review*, May 1966, entire issue.

ment is still under way. It came about because two earlier commissions (1929 and 1947) recognized what they called "the need for allowing a revision of the Constitution to be proposed by the legislature". Until 1962, the only certain way by which the California Constitution could be revised was by a constitutional convention. There is, of course, a constitutional provision authorizing the legislature to propose amendments, but the use of the word "amendment" seemed to denote something less—presumably much less—than the overall constitutional revision that is needed. Hence the creation of the Constitutional Revision Commission whose work has now been completed.¹⁸ The portions so far published seem to have been prepared with commendable thoroughness and care.

In 1963, the legislature of Florida proposed and in 1964 the voters approved at the general election a constitutional amendment authorizing the legislature to undertake a general revision of the constitution, submitting their recommendations to the electorate. This they did in the form of a series of amendments tied together in a fantastic "daisy chain" arrangement under which, although the amendments were voted on separately, if one of them lost, they all lost. Needless to say, they all lost.¹⁹

The New Jersey experience was similar in one respect. Following a series of abortive efforts at constitutional revision through more conventional procedures, the legislature in 1942 undertook the task. Its failure to come up with an acceptable plan gave impetus to renewed efforts to obtain a convention.²⁰ This goal was achieved in 1947. In Oregon, the voters authorized the legislature by a two-thirds vote of the membership of both houses to revise the constitution in whole or in part, and to refer the proposed changes to the voters. This was an interesting but not particularly successful experiment in constitution making.

There have been a few instances in which a law institute, state bar association or other body of comparable standing has drafted a complete constitution, but none of these efforts have met with much success. In 1950, the Connecticut Commission on State Government

18. *Proposed Revision of the California Constitution*. San Francisco, February 1966.

19. See Dauer, Manning, J., and Kammerer, Gladys M., *Legislative Power to Revise Constitution, Reorganization of Board of Control, and Other Constitutional Amendments of 1964*. Public Administration Clearing Service, University of Florida. Gainesville, 1964.

20. See *The Book of the States 1964-1965*, p. 8; and Bebout, John E., *New Tasks for a Legislature*. *National Municipal Review*, v. 33, January 1944, pp. 17-21.

Organization (an executive reorganization commission) became convinced that defects in the existing constitution were responsible for many of the defects in the organization of the government, and that these could be remedied only by correction of the constitutional defects which caused them. Accordingly, a study of the constitution was undertaken, and the text of a complete new constitution was submitted as a part of the Commission's report.²¹ It was an excellent report, but it met with resistance in the legislature. Bills were introduced calling for a convention to draft a new instrument to be submitted to the voters, but no action was taken.

The bar associations of California and Florida both presented draft constitutions in 1944. The Louisiana Law Institute undertook the most ambitious project of this type so far, turning out in 1950 a report in five massive volumes of research material in support of the draft constitution which they proposed, but now—years later—Louisiana is still trying to obtain a convention to revise its constitution. The experience in Pennsylvania with the state bar association amendments now appears to offer some hope of success. William A. Schnader who served as Attorney General under three Governors and for a longer time than any other man in the history of the Commonwealth has, throughout his long period of public life, been an ardent advocate of constitutional reform. Convinced by long years of always futile efforts to obtain a constitutional convention that this was a hopeless quest, he headed up during his term as President of the Pennsylvania Bar Association a project to revise the state constitution, article by article, wrapping up the whole revision project in a single package containing twelve constitutional amendments which, when submitted to statewide referendum by the legislature and approved by the voters, would give the state a completely revised and thoroughly modern constitution.

This has been an interesting and challenging approach to the solution of an age-old problem. Pennsylvania has been trying—always unsuccessfully—to revise its ancient and outmoded century old constitution for well over half of this period. It may, therefore, be appropriate to summarize the current status of this undertaking. Four amendments on the Declaration of Rights, the Legislature and Legislation and repealing a useless article on Railroads and Canals were passed for the first

21. *The Report*. Hartford, 1950; see also: Braden, George A., and Cahill, Fred V., *A New Constitution for Connecticut*. *Connecticut Bar Journal*, I, June 1950, pp. 121-181; II, September 1950, pp. 265-323.

time in 1965, and await second passage in 1967-1968. One on Public Officers was approved by the voters on May 17, another on Private Corporations will be voted on this November. On July 27, three more amendments on the Executive, Elections, and Future Amendments completed first passage. Robert Sidman, Executive Director of a Modern Constitution for Pennsylvania, a statewide citizens organization, reports that:²² "To summarize, amendments to implement all of the Pennsylvania Bar Association's 'Project Constitution' except the Judicial, Taxation and State Finance, and Local Government articles (and three sections of the article on the Legislature having to do with legislative apportionment), are now on their way to adoption." Proposed amendments on these remaining three Articles and the Apportionment sections have been drafted and introduced, and may yet receive some attention from the General Assembly in its remaining months.

The Effectiveness of a New Constitution

So much effort is now required to obtain a new constitution that all involved are just about exhausted when the ordeal is over. This may account for the fact that there has been so little follow-up to ascertain how the new instrument actually works in practice. For sometime, John E. Bebout has been urging that a serious effort be made to determine how each new constitution works, and to evaluate its effectiveness.²³ Martin L. Faust did attempt this in Missouri five years after the Convention of 1943, and again, ten years after.²⁴ Bennett M. Rich commented on this matter in his book on New Jersey Government²⁵ and had planned an evaluation ten years after. During the current year, Albert L. Sturm, who made a special study of the Michigan Convention of 1961-1962 while it was in session, has been engaged in a task never before undertaken—a study of the processes of transition from the old constitution to the new. This is an important question: What *does*

22. *Bulletin*, July 29, 1966, p. 1.

23. See his explanatory Note in the Sixth Edition of the *Model State Constitution*, and an article, Recent Constitution Writing. *Texas Law Review*, v. 35, October 1957, pp. 1071-1089.

24. *Five Years Under the New Missouri Constitution; a Progress Report*. Missouri Public Expenditure Survey, Jefferson City, 1950; and an article, Constitutional Convention in Missouri: *University of Missouri Business & Government Review*, v. 3, March-April 1962, pp. 15-24.

25. *Government and Administration of New Jersey*, Chapter 3. Crowell, New York, 1957.

happen in governmental operations when the basic rules are changed? Until the Sturm study is completed and published, no one has ever really known.

II. SUBSTANTIVE PROVISIONS

It is not an easy thing to summarize in a few well chosen words the changes that have taken place in the constitutions of fifty states in some ten or a dozen different areas in the last quarter of a century. On the other hand, it is not impossible to note specific changes or types of changes occurring with sufficient frequency to be identified as trends or probable trends. This will be attempted here in a number of major areas: the bill of rights, the executive, legislative and judicial branches of government, suffrage and elections, taxation and finance, local government, intergovernmental relations, amendment and revision, and important functions or services. Since people do not necessarily think in terms of such a classification, the problems that now seem to concern them most, such as legislative apportionment, gubernatorial succession, and judicial reorganization will be considered under the appropriate heading.

The Bill of Rights

The principles underlying the fundamental rights may be eternal, but their application varies with time, place and circumstance. Men have always tried to write into the fundamental law guarantees of those rights that have most recently been won and which they assume, therefore, are most likely to be violated. As conditions change, man's concept of what is important changes too. Rights once regarded as essential may lose their meaning. In the early days, a citizen may have needed a gun to protect his life, his home and his family whereas today, the unrestricted shipment of firearms in interstate commerce, and their easy accessibility from mail order houses in itself constitutes a danger in a society plagued by a rising crime rate. On the other hand, other rights unknown in a frontier society which was largely agricultural and almost wholly rural assume major importance in a highly industrialized and urbanized society such as now exists. Thus does the right to organize become a major concern, as does the right to freedom from discrimination because of race, creed, color, sex or national origin.²⁶

26. See the author's A New Bill of Rights? *National Municipal Review*, May 1957, pp.

It is no accident, considering the great current interest in civil rights, that significant developments have occurred in this area. But it is also significant that these changes have tended to enlarge the concept of civil rights, and to make these rights more meaningful in the lives of all citizens under present day conditions. The advances that have been made have been confined to altogether too few states, and for no reason that is readily apparent, the greatest advances have been made in some of the oldest states and in the newest ones.

For example, the right to organize is one of those rights still in the process of establishment. As long as this country had an agricultural economy, there was no problem, for farmers have always been highly individualistic and independent people. Labor unions, labor organizers and union membership were concepts far removed from their thinking and experience. But in a rapidly urbanizing and industrialized society, the unionization of workers has, in recent decades, made great progress. The right to form unions, and to maintain membership in them is widely recognized by law and has been upheld by the courts in a large number of cases.

Gradually, however, the conviction grew that this was not enough. A distinguished group of lawyers and political scientists who drafted the Fifth Edition of the *Model State Constitution* in 1948 concluded that the time had come when the right to organize should be given specific protection in the basic law:²⁷

Right to Organize. Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the state, and except for purposes of resisting the duly constituted authority of this state or of the United States.

This section goes on specifically to extend the right to organize to employees, both public and private. This has been called the greatest change in the Bill of Rights in American constitutions in our time. Comparable provisions are found in the constitutions of Missouri;²⁸ New Jersey;²⁹ New York;³⁰ and Puerto Rico.³¹

238-244; also his Chapter 9 in the author's symposium, *Major Problems in State Constitutional Revision*. Public Administration Service, Chicago, 1960.

27. Article I, Section 103. National Municipal League, New York, 1948.

28. Article I, Section 29, 1943.

29. Article I, Section 19, 1947.

30. Article I, Section 17, 1938.

31. Article II, Sections 16 and 18, 1951.

Many state and local governments, beginning with the Ives-Quinn Law in New York in 1945, have been active in the effort to eliminate discrimination in employment and in other areas. Except for temporary measures taken during World War II, these efforts preceded the Federal Government's entry into the field. Many jurisdictions followed the lead of New York, enacting fair employment practice laws, and establishing agencies and procedures for their enforcement. Of course, statutes enacted under general legislative powers are not to be confused with constitutional provisions barring discrimination. But these have not been lacking. Although they have come slowly, their number has been gradually increasing. New Jersey led off,³² followed by Alaska,³³ Hawaii,³⁴ Puerto Rico,³⁵ and now Connecticut.³⁶ The Alaska provision reads:

Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, creed or national origin. The legislature shall implement this Section.

Throughout the period included in this survey, two types of questions have tended repeatedly to recur. One of these involves invasion of the right of privacy, originally in the form of wiretapping, now often referred to as "bugging", and including a multiplicity of electronic devices. There is a deep conflict regarding the use of these practices. From the viewpoint of the citizen, they are clearly a violation of the right of privacy, of the age-old Anglo-Saxon principle that a man's home is his castle. Such persons regard all of these devices and procedures as an iniquitous practice which ought seldom, if ever, to be condoned, while those whose chief concern is with law enforcement believe that their use is proper when it is or when it appears to be necessary in order to achieve the ends of justice. The New York convention of 1938 took a strong position on this matter, sanctioning interception of communications "only upon oath or affirmation that

32. Article I, Section 5, 1947.

33. Article I, Section 3, 1956.

34. Article I, Sections 4 and 7, 1950.

35. Article I, Section 1, 1951.

36. Article I, Section 20, 1965.

there is reasonable ground to believe that evidence of crime may thus be obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof."³⁷ The Puerto Rican convention took a similar position,³⁸ as does the new Sixth Edition of the *Model State Constitution*.³⁹

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. Wiretapping is prohibited.

The right of the people to be secure against unreasonable interception of telephone, telegraph and other electronic means of communication [and against unreasonable interception of oral or other communications by electric or electronic methods] shall not be violated, and no orders or warrants. . . . Evidence obtained in violation of this section shall not be admissible in any court against any person.

The latter part of this period has witnessed a new emphasis on due process for persons accused of crime. After long years of carelessness in such matters—if not worse—in many jurisdictions, the new constitutions seek to insure their protection, as the following provisions from the constitutions of Alaska⁴⁰ and Puerto Rico⁴¹ clearly indicate:

The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life.

These two provisions were framed in the decade of the Fifties when the spirit of McCarthyism was riding high at both the national and state levels. More recently, in the Sixties, the emphasis has shifted to due process in judicial procedure. This important development is illustrated by a new provision in the *Model State Constitution*.⁴²

(a) In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, . . . to have compulsory process for obtain-

37. Article I, Section 12, 1938.

38. Article II, Section 10, 1951.

39. Article I, Section 103.

40. Article I, Section 7, 1956.

41. Article II, Section 8, 1951.

42. Article I, Section 1.06.

ing witnesses in his favor, to have the assistance of counsel for his defense, and to the assignment of counsel to represent him at every stage of the proceedings unless he elects to proceed without counsel or is able to obtain counsel. . . .

(b) All persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, giving due weight to the evidence and to the nature and circumstances of the event. . . .

This development raises some significant questions discussed elsewhere in this volume, such as the extent to which the Federal Bill of Rights has been "read into" the state constitutions, strengthening and supplementing their provisions in some instances, superseding them in others, and the role of the Supreme Court in establishing and enforcing procedural standards in this field. The latter especially has generated a bitter controversy which is now raging between those dedicated to civil rights and those whose major interest lies in the field of law enforcement.

The Executive

As in other major areas in a period when constitutional conventions for general revision were few in number and difficult to create, supporters of change in the executive branch have been obliged to rely chiefly upon amendments to accomplish individual changes, most of which are designed to strengthen the position of the governor. Many of these have been recommended for years by students of state government, such as lengthening the term of the governor, electing the governor and lieutenant governor as a team, removing (or at least easing) limitations on reeligibility, establishing the short ballot principle so that executive responsibility would not be divided among so many elective officers, forbidding the legislature to include both appropriations and substantive provisions in the same piece of legislation, broadening the governor's veto power to include reduction as well as the deletion of items, giving the governor the power to initiate reorganization, requiring a two-thirds vote rather than a simple majority to override a veto.

Even when a convention does meet, the traditional conservatism of such bodies may operate, as it did in the Connecticut Convention of 1965, to hold accomplishment to a minimum. All of these proposals, as well as others, were considered in this convention, but only the last

one was adopted, and this was "linked with another change to allow the legislature to have a veto-reviewing session after the end of regular sessions when governors have frequently" made extensive use of their veto powers.⁴³

That some of these proposals are making real progress by the piecemeal amendment procedures, there can be no doubt. In the last bien-nium, four states completed action on amendments to lengthen the terms of elective officers—a change which Michigan had accompanied in its 1961-1962 Convention. The move in this direction is under way in other jurisdictions. In 1950, the governor had a four-year term in twenty-five states, a two-year term in twenty-one. Now the figures are thirty-six and fourteen, respectively. Restrictions on reeligibility are gradually being eased. In Missouri just last year, the voters approved an amendment permitting the governor to succeed himself, and last month, the General Assembly of Pennsylvania approved a similar proposal for submission to the electorate. There are now thirty states with no limitation on the number of consecutive terms, and other states are moving in this direction.

Constitutional salaries and salary limitations are gradually disappearing, and by legislative action, salaries are being raised to bring them in line with present day standards. The problems of continuity in government in case of enemy attack and gubernatorial succession continue to receive attention. Provisions designed to serve the twofold purpose of strengthening party responsibility and the position of the governor by requiring the governor and lieutenant governor to run as a team have been adopted in six states between 1953 and 1964, in five by constitutional amendment, in one by statute. Hawaii had accomplished this in its 1950 Convention, Michigan in its Convention of 1961-1962. The proposal is now being considered in other states.⁴⁴

For sometime, an effort has been made to discover some type of machinery that would at the same time hold within reasonable limits the number of executive departments and entrust the executive with the responsibility for maintaining an orderly administrative structure, subject to legislative review. Most constitutions within the period under review (except Georgia, and now Connecticut) contain a limitation

43. Bosworth, Karl A., 1965 *Constitutional Convention: Its Policies and Issues*, p. 4. *Connecticut Government*, v. 19, March 1966.

44. Bell, George A., *State Administrative Organization and Management*, 1964-65, in *The Book of the States*, 1966-67, pp. 127-130. Council of State Governments, Chicago, 1966.

on the number of executive departments. New York and Missouri both make the mistake of freezing specific departments into the constitution. The final responsibility for executive organization lies with the legislature in New Jersey and New York, while in Missouri and the *Model State Constitution*, the executive is given an important responsibility. The Governor of Missouri was given power to regroup seventy agencies into ten executive departments, with the legislature authorized to create five more bureaus subject to assignment to the appropriate department by the Governor. In Michigan, the chief executive was required to consolidate the more than 120 boards, commissions and other agencies into no more than twenty executive departments. A similar provision was contained in the Oregon Commission's draft which failed of adoption. In the post-Convention reorganization in New Jersey, the Governor assumed leadership in this area, not by reason of any specific constitutional mandate but rather because of his duty of making recommendations to the legislature.

It is not necessary, nor does space permit detailed comment on all the things that are now being done in this area. Enough has been said to make two points quite clear, namely, that there is a definite trend to adopt specific changes designed to strengthen the position of the governor, and that these individual changes can be and are being accomplished by judicious use of the piecemeal amending procedures.

The Legislature

There is actually little to report here on substantive changes affecting the legislature. Although Nebraska's unicameral amendment, adopted in 1934 and effective in 1937, attracted wide attention, and prompted the introduction of similar proposals in many states, only a few of these were accorded serious consideration and none were adopted. Recent constitutional conventions in Michigan and Rhode Island considered the proposal, but neither saw fit to adopt it.

There have been few modifications of legislature powers. On this point, Professor Bosworth makes some interesting comments on the work of the Connecticut Convention of 1965:⁴⁵

. . . . while making the required changes in the legislature, [the Convention] could have undertaken many dubious changes and frozen in the Constitution many doctrines. Instead, from this vantage point

45. *Op. cit.*, p. 8.

it appears that the Convention didn't harm the old document much and did make a number of improvements. The Constitution of 1965 is still short and generally clear in meaning, with the legislature still possessing most of the powers of government.

It would appear that what happened in Connecticut was not much different from what has been happening in other states. The truth of the matter is that, aside from apportionment which has been and seems likely to continue to be a crucial issue—politically, at least—most of the problems confronting the legislatures are not constitutional problems. They are problems of organization and procedure, so completely within the province of legislative powers that they can be taken care of by changes in the rules, by statute, or by the voting of additional funds for higher salaries, more and better staffing, and better offices and facilities for work.

Apportionment has been and still is a major issue affecting the legislative branch, and the critical questions here have to do with apportionment standards and procedures. These are important policy matters that are clearly constitutional in nature. They were major questions before the Conventions in Connecticut and Rhode Island, and it appears certain that they will be in New York. All of these are unlimited conventions, while the pending convention in New Jersey has been conceived solely for the purpose of dealing with the apportionment problem.

The application of these standards and procedures, once they have been determined, in establishing the pattern of legislative districts, is a legislative responsibility which has no proper place in the Constitution. While this problem may now be classified politically as a "hot potato", it appears likely that the political hazards currently attached to it may be lessened or perhaps even eliminated with the passage of time, or when computers take over the job—a possibility that is not at all unlikely.

A third problem arises from the long recognized lack of confidence in elected representative assemblies, which has in the past expressed itself in innumerable limitations and restrictions on the exercise of legislative power. In spite of strenuous efforts on the part of some legislatures to improve their public image by improving their performance, and of such organizations as the National Legislative Conference and the Conference of Legislative Leaders, the lack of confidence is still apparent, expressing itself in a variety of efforts to make specific actions

mandatory or to make the constitutional provisions regarding them self-executing (or automatic) as in the case of some plans for achieving apportionment in case the legislature fails to discharge its responsibility.

Such efforts are rarely successful, and their effect in further undermining the prestige of the legislature by suggesting that it is likely to fail, is an unfortunate one at a time when the need is to strengthen, not weaken, the position of the legislature. The point is often made that many states which bemoan their loss of power to the Federal Government still cling to constitutional limitations which cripple their own legislatures. The author has discussed some of these problems elsewhere.⁴⁶

The individual changes may not at first appear to be of momentous significance, but collectively they reveal a lack of confidence in and respect for the legislative prerogative. They show a tendency to undermine rather than to strengthen the legislative branch of government, and this in spite of the fact that it is generally recognized that these restrictive provisions have been excessive in number and most unfortunate in their effects. The task of the legislature—difficult enough under the most favorable circumstances—has been made more difficult than it would otherwise be, and needlessly so. Yet the old restrictions are difficult to remove and new ones continue to appear. Many of them are of a positive character, in the form of mandates. Others, such as self-executing provisions impose restrictions by implication. Provisions dedicating revenues, by imposing unwarranted and improper restrictions upon legislative control of the purse, at the same time make a mockery of the budgetary process. Yet provisions of these types continue in effect or even to multiply long years after well informed people have recognized that from a public policy viewpoint, they are unwise.

Charles W. Shull has written, "Consideration should be given to the reconstitution of state legislative bodies as effective elements in the entire process of state government."⁴⁷ There is little evidence that this is being done. "Highly restricted and limited in many ways, state lawmaking assemblies have not been geared to cope with the growing complexities of modern legislation. They have exhibited tendencies at times to obstruct or to insist upon privileges and status rightly or

46. Concepts of Legislative Power in State Constitutions. *Louisiana Law Review*, v. 14, June 1954, pp. 749-763.

47. Chapter 12 in the author's *Major Problems in State Constitutional Revision*. Public Administration Service, Chicago, 1960.

wrongly conceived. On occasion, they seem to have assumed they were the entire government."

"State legislatures," he continues, "need to be reformed and reshaped so that the legislative power is more fully vested in one body—though not necessarily in one house. Control of the purse should be vested more clearly and securely in the legislature; constitutional provisions that, in effect, make appropriations should be eliminated. The horizons of the American state legislatures can be widened by sound constitutional treatment, and such treatment will provide one for their future."

The Judiciary

The New Jersey Constitution of 1947 provided for a thorough revision of the entire judicial structure of the state. This was not only the first in New Jersey for a century but the first major reorganization of the courts in any state for a very long time. Of this transformation, it was said that it brought the state from a position of having probably the worst judicial system in the country to that of having what was then the best and still is one of the best. Although organizations like the American Judicature Society, the American Bar Association, the National Municipal League, and others have been working for judicial reorganization for years, progress was, until very recently, so slow as to be virtually imperceptible. Now, there is an increasing number of states in which judicial reorganization is an accomplished fact—Colorado, Illinois, Missouri, New Jersey, New York, North Carolina, Puerto Rico. Other reorganizations are in progress. One of the most interesting aspects of this movement has been the fact that Missouri, New Jersey and Puerto Rico have been the only jurisdictions to achieve judicial reorganization by the constitutional convention procedure. All the rest have been accomplished through the adoption of constitutional amendments, following a long period of study and popular education. Extensive studies, embracing organization, procedure and general performance, have been made in some cases by existing agencies (the Legislative Council in Colorado,⁴⁸ the state bar association, or by a special legislative investigating committee (Tweed Commission in New York). The amendments, while they are as different as the states which adopted them, were similar in one respect: each establishes, or at

48. See Shannon, Daniel J., *Judicial Reform for Colorado Courts of Special Jurisdiction*. *Judicature*, v. 50, June-July 1966, pp. 16-22.

least moves toward acceptance of basic concepts of judicial organization repeatedly recommended over a period of years.⁴⁹

First among these is a unified court system. The need for a central administration for the court system is recognized, this function being assigned either to the chief justice or to an administrative officer. There is evident a tendency toward higher qualifications for judges in the lower courts, to require full time service on a salary basis, to eliminate the fee system, and—unbelievable though it may seem—to abolish the justices of the peace, a goal that has now been accomplished in a number of jurisdictions. In every case, a serious effort is made in the amendment and in the supporting legislation to unify the court system, to simplify the judicial structure, to streamline judicial procedure and to make the courts more responsive to present day needs.

Suffrage and Elections

Under normal circumstances, this is not a very active field in constitution making. There was a flurry of activity early in the World War II period, in an effort to make the suffrage available to the men and women in the Armed Services. As late as 1948, one observer noted that "few changes of any importance have been made in this area in recent years."⁵⁰ In 1945, Georgia made two significant changes which indicated a line for future development—reducing the minimum age for voting to eighteen years and eliminating the poll tax as a requirement for voting. As usual, the states responded slowly. So far only four have established a minimum voting age at less than twenty-one. Kentucky joined Georgia in adopting the eighteen year qualification, Alaska adopted nineteen years, and Hawaii twenty. The Twenty-fourth Amendment—the poll tax amendment, effective in January 1964—outlawed poll taxes as a qualification for voting in the five states that had still retained this requirement. Three of these, Arkansas, Texas and Virginia, had abolished the tax as a voting prerequisite before the Amendment had received the required number of ratifications.

Taxation and Finance

A number of factors have contributed to the great expansion in state

49. See Aumann, Francis R., *The Judiciary*, Chapter 13 in the author's *Major Problems*, *op. cit.*; also Wheeler, John P., Ed., *Salient Issues of Constitutional Revision*. National Municipal League, New York, 1961.

50. Short, Lloyd M., in a paper presented at the Annual Meeting of the American Political Science Association, Chicago, December 28, 1948.

and local governments, and, thereby, to the critical financial problems with which these governments are now and have been confronted. These problems have been met in part by tremendous increases in Federal grants-in-aid, and in part by the adoption of new broadbase taxes or increased rates for existing sales and income taxes. In addition, it has been necessary for the states to abolish long outmoded restrictions on the incurring of debt or the adoption of amendments authorizing bond issues for specific purposes—a procedure often necessitated by state constitutional restrictions against the incurring of indebtedness for capital expenditures. Although a great many of these problems are more statutory matters than constitutional, the constitutional changes have not only been very numerous, but actually more numerous than in any other single field.⁵¹ It is significant, too, that the provisions adopted in any given jurisdiction were often not only lacking in consistency but might have exactly opposite effects.

Despite the obvious and generally recognized objections to a system of dedicated revenues, the states go merrily on placing constitutional restrictions on the power of legislatures to raise and spend revenues from taxes or from other sources. In a number of jurisdictions, this situation has become so bad that the legislature has effective appropriation control over only a small fractional part of the total state revenues. Even in recent years, many states have adopted constitutional amendments imposing taxes on motor vehicles and their fuels and dedicating the receipts therefrom to highway purposes. This action promoted by the automobile clubs, truck and bus operators, and the highway building industry is but a conspicuous example of a trend evident in many quarters to regard any taxes, licenses or fees paid into the public treasury by the members of any organized group as their own property to be used only for purposes beneficial to them. This applies to bank taxes, licenses and fees paid by sportsmen, members of the professions, and many others. The automobile lobby now brags that revenues from motor vehicle and highway user taxes are now “untouchable” in many states. Similarly, revenues from hunting and fishing licenses have long been dedicated in many states. California and Missouri, justifying their action by Federal grant-in-aid programs, dedicated such receipts to conservation purposes. Missouri also adopted a one mill levy on general property for the State Park Fund.

51. See the author's chapter on The Use of the Amending Procedure Since World War II, in his *Major Problems on State Constitutional Revision*. Public Administration Service, Chicago, 1960.

Only one state, Georgia, has taken a noteworthy step in the opposite direction by adopting a section which provides:⁵²

All money raised from taxes, fees, and assessments for State purposes . . . shall be paid into the General Fund of the State Treasury and shall be appropriated therefrom, as required by this Constitution, for the purposes set out in this Section and for these purposes only.

In another section the revised Georgia Constitution provides that appropriations must be made to agencies in specific sums and not the revenue of a certain tax. A somewhat similar provision was proposed by the Taxation and Finance Committee of the Minnesota Constitutional Commission; it received considerable public support but was rejected by the full Commission by a close vote. This state did move a step in this direction, however, when in 1944 an amendment was adopted authorizing special taxes on aircraft fuels without dedicating the revenues derived therefrom, as had been done in 1920 in an amendment for highway purposes.

Mention has been made of contradictory provisions. In the early years of the period under review, this was especially true with respect to tax exemptions. While the mounting valuation of exempt property was prompting the states to restrict exemptions accorded to religious, charitable and educational institutions to property used exclusively for such purposes, they were authorizing new exemptions (some mandatory, some optional) for such purposes as rural electrification cooperatives (Georgia), slum clearance and redevelopment projects (New Jersey), lands being reforested (Missouri and Virginia), new industries for a period of years (Arkansas), and preferences for veterans (Alabama, Arkansas, New Jersey, Texas and Virginia). Georgia alone moved toward reform by nullifying all tax exemptions previously granted in corporate charters.

Overall tax limitations continued to appear, as in Georgia and Washington. Missouri specifically authorized the classification of property for purposes of taxation, while Florida and Oklahoma prohibited ad valorem taxes for state purposes.

Changes in the debt provisions in New York were designed to give the legislature greater freedom in decision making on the incurring of new debt, but with very specific provisions for the payment of principal and interest on such indebtedness within a limited period.

52. Article VII, Section 2, Paragraph 3.

New Jersey placed a limit upon general indebtedness at 1 per cent of the total amount appropriated by general appropriation law for that fiscal year. Beyond that point, indebtedness could be incurred only by special act restricted to a single purpose and approved by popular vote. Pennsylvania reversed long-standing practice when it specifically authorized incurring indebtedness for capital improvements. A similar provision in Wisconsin led the Supreme Court of that state to hold unconstitutional a provision for veteran housing; this was later reversed when a state constitutional amendment authorizing such preference was submitted to and approved by the voters.

In 1945, Michigan adopted an amendment extending the list of works for internal improvement previously published, in which the state might participate. The voters have shown a considerable willingness to accept such proposals, as illustrated by an Oregon provision for loans to veterans for home construction and farm purchase, Minnesota and Wisconsin provisions for state aeronautics projects, and a Wyoming amendment for conservation and water projects. These actions suggest the reasonableness of the Pennsylvania proposal, although the Minnesota Commission—as noted—rejected a similar proposal. During these years, several amendments were adopted providing for new taxes or increasing old ones, containing specific provisions (as in Michigan and Oregon) for the sharing of the proceeds with local governments.

Local Government

Second only to the field of taxation and finance in the number and significance of substantive changes in state constitutions in the early years of the period under review was the field of local government. But, here also, there was evidence of contradictory trends. While state governments were authorized to impose tax and debt limits on local governments, as in New York, to require annual budgets as in Missouri (and other states), they were authorized to enact general legislation applicable to all local governments or to those in certain classes determined by state legislative action, the principle of local self government was extended by constitutional amendments providing for county as well as municipal home rule, optional charters (New Jersey), county manager government, to levy taxes and issue bonds for certain approved purposes. Further restrictions on special legislation were imposed. One of the most far-reaching constitutional provisions relating to local government, obviously designed to strengthen the con-

stitutional position of the cities and counties, is found in the New Jersey Constitution:⁵³

The provisions of this Constitution and of any law concerning municipal corporations formed for local government or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

Attempts at improving local government are to be noted in the provisions of the Missouri Constitution extending home rule to cities and counties, county consolidation or dissolution, joint performance of certain governmental functions, and contractual arrangements between counties; the Georgia provision for county consolidation and a prohibition on the formation of new counties except by the process of consolidation; and the Oregon provision for county manager government.

As a matter of fact, home rule, so called, constitutes one of the governmental enigmas of our time. While on the one hand, local government people continue to clamor for more home rule of the conventional variety, a rapidly urbanizing country suffers acutely from an excess of home rule—an excess which has resulted in an absolutely indefensible number of local units, each so jealous of its autonomy and prerogatives that, in many metropolitan areas, something approaching governmental chaos results. These units show, in many cases, little disposition to cooperate and even less to consolidate, so that uniform policies may be agreed upon and enforced on an areawide basis. Although the elimination of many of these units has been repeatedly recommended, most recently by the Committee for Economic Development,⁵⁴ there seems to be little likelihood that while present attitudes prevail, much will be accomplished. Certainly there is little basis for hope from anything that has happened recently in the field of constitutional change.

53. Article IV, Section 7, Paragraph 11; Michigan has a very similar provision, Article VIII, Section 4.

54. *Modernizing Local Government*. New York, 1966.

Intergovernmental Relations

Important though they were, intergovernmental relations received scant attention until very recently. Now, in view of the mounting interest in them and their importance in modern American Government, no survey of constitutional developments during this quarter of a century could properly ignore them. Although it has been pretty well established that constitutional authorization for cooperative action between and among the different units and levels of government are not really necessary,⁵⁵ a number of states have included such provisions in new constitutions, or added them to old ones by amendment.

There are provisions in the *Model State Constitution*, and in the constitutions of Alaska, Hawaii, Michigan and Missouri authorizing general interlevel and interjurisdictional cooperation.⁵⁶ The Hawaiian Constitution uses this language: "The legislature may provide for cooperation of state and political subdivisions with the United States, other states or their subdivisions, in matters affecting public health, safety and general welfare." Hawaii and Louisiana particularly emphasize Federal-State cooperation, as the above language indicates, the former in health and welfare, the latter in reclamation,⁵⁷ while Nevada has a provision for interstate compacts in the conservation field.⁵⁸ The number of constitutional amendments proposed in the intergovernmental field in an eleven-year period (1946-1956) was not great; two-thirds of these were approved by the voters, one-third rejected.⁵⁹

Most of the proposals in the Federal-State and State-Local relations areas dealt with fiscal matters. Of those involving interstate relations, two dealt with boundary questions, two with ratification of interstate compacts, and one with a purely statutory matter. Many of the states that have home rule have established it by constitutional provision. Many of the states that have home rule have established it by constitutional provision. An idea now winning increasing acceptance—establishment of an office or agency on intergovernmental relations is, in some jurisdictions established by constitutional provision. The Alaska

55. See Zimmerman, Frederick L., and Wendell, Mitchell, No Positive Barriers. *National Civic Review*, v. 48, November 1959, pp. 522-525, 554, and Wiltsee, Herbert L., and Wendell, Mitchell, Chapter 16 in the author's *Major Problems in State Constitutional Revision*. Public Administration Service, Chicago, 1960.

56. Alaska, Article XII, Section 2; Hawaii, Article XIV, Section 5; Michigan, Article III, Section 5; and Missouri, Article XVI.

57. Article XIV, Section 5, and Article IX, Section 3, respectively.

58. Article IX, Section 3.

59. See the author's Use of the Amending Procedure Since World War II, *op. cit.*

Constitution provides for such an Office.⁶⁰ Since any state legislature has the power to establish such an office, constitutional provision for it is not only unnecessary but probably unwise. The same may be said of constitutional authorization for interlocal cooperation, although four state constitutions make specific provision for such cooperation.⁶¹

Amendment and Revision

There is some evidence of increased interest in the processes by which constitutional changes become possible. It may be that the widely publicized difficulties of Illinois and its famous Gateway Amendment contributed to this interest.⁶² The Illinois experience, however, was certainly not unique. Connecticut, Kentucky, and Michigan, and possibly other states were confronted with a similar situation. It is obviously a serious matter when it becomes necessary to amend the amending process before other needed changes in the constitution can be made. The provisions on other aspects of the amending procedure in the six most recent constitutions include for most of the states involved:⁶³ (1) a two-thirds vote for proposal of amendments by the legislature; (2) a majority of those voting on the amendments in the popular referendum; (3) provision for constitutional initiative in two jurisdictions only; (4) mandatory periodic referendum on question of holding a constitutional convention required in four; (5) mandatory submission of convention proposals to the voters in all six; (6) the popular vote required to call a constitutional convention is a majority of those voting on the question in all six; (7) similarly, a majority of those voting on the question is sufficient for ratification of convention proposals. The *Model State Constitution* has a requirement for preparatory research before a convention, and Alaska forbids the holding of limited constitutional convention.

60. Article X, Section 14. The old Pennsylvania Bureau of Municipal Affairs was in a constitutional department (Department of Internal Affairs), but the new Department of Community Affairs was created by statute in 1965. Senate Bill No. 1144, 1965.

61. See the author's *American Intergovernmental Relations*, Chapter 20. Charles Scribner's Sons, New York, 1964.

62. For the story of its adoption, see *The Book of the States*, 1952-1953, p. 62; on its effects, 1954-1955, p. 66, and 1956-1957, pp. 68-69.

63. Based on Dickson, David F., and others, *Comparison of Selected Features of Six Recent Constitutions and the Florida Constitution: a Tabular Analysis*. Institute for Governmental Research, Florida State University. Tallahassee, March 1966.

Health, Education, Welfare and Other Functions

Everyone who works on state constitutions sooner or later comes face to face with the question: What, if anything, does one do constitutionally with the major functions of government which, together, account for the bulk of all state expenditures? Since these are matters which clearly fall within the scope of legislative power, it seems pretty clear that a minimum amount of space should be accorded them in the constitution. Yet, at the same time, one hesitates to omit them entirely, lest such omission be interpreted as evidence of a lack of interest on the part of the framers, or be used as a basis for prejudicial treatment of these functions. The Fifth Edition of the *Model State Constitution* solved the problem by a simple declaration that:

Section 1007. *Powers of the State.* The enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government. The state government shall have full power to act for the government and good order of the state and for the health, safety, and welfare of its citizens, by all necessary and convenient means, subject only to the limitations prescribed in this constitution and in the Constitution of the United States.

Other constitution framers have been more specific. On what basis does one select one for special mention and exclude all others, and having selected one—education, for example—then proceed to elaborate on both the public schools and higher education? All but one of the six most recent constitutions has a separate article on education, and all provide for free public schools. Two states (Alaska and Hawaii) have separate articles on health, education and welfare and on conservation and the development of natural resources.

III. A CHALLENGE AND AN OPPORTUNITY

The Concept of Continuous Revision

For a great many years, there have been occasional expressions of interest in the concept of continuous revision, but little serious effort has been made to implement such a policy and make it effective. The earliest interest in the idea known to the writer occurred in Pennsylvania whose Constitution of 1776 provided for a Council of Censors of thirteen members, popularly elected every seven years, for the dual purpose of examining the actions of both the executive and the As-

sembly, and of proposing amendments to the state constitution at regular intervals. Although the idea seems to be fundamentally sound, it was found that in practice, the Council so restricted the powers of the Governor that it was soon abandoned. Other states borrowed the device, but for present purposes, the experience of Vermont which used this method of constitutional amendment from 1777 to 1870 is most significant. Thirteen different Councils of Censors were chosen during the ninety-two years the plan was in effect. Three made no proposals for amendment. An excellent study of Vermont state government, just published,⁶⁴ reports that the ten which did

meet in two or three sessions of several days each, at which time they carefully investigated the government of the state and the work of each branch. The records of these sessions show meticulous attention to the problems of government, as seen by the Councils. Several of their "Addresses" to the people are state papers of value, showing a clear perception of political issues and an understanding of political thought that deserves high praise. These recurring bodies of thirteen men represented the best political thinking of the state, their chief weakness being that they were usually many years ahead of their time. Had they been accepted, Vermont would have remained as progressive as in the 1770's.

Every Council of Censors which proposed amendments called a constitutional convention to consider these amendments. Only twice did a convention accept major innovations, one the shift from a unicameral to a bicameral legislature, the other a change in the method of constitutional amendment. When the Council was abolished, the duty was assigned to the Senate which has consistently failed to function in this capacity.

Although this experience was, by no means, an entirely negative one, there was no further consideration of the idea of continuous revision until about ten years ago, when the concept was revived. In Kentucky, a Constitution Review Commission was given statutory status, so that it might operate on a continuing basis. In Texas, a Citizen Advisory Committee, with the State Legislative Council as its designated research agency, proposed the establishment of "a permanent Constitutional Commission, which would make continuing studies on the effectivity

64. Nuquist, Andrew E., and Edith W., *Vermont State Government and Administration*, pp. 30-49. Bureau of Government Research, University of Vermont. Burlington, 1966.

of the Constitution and periodically report to the legislature and the people of Texas on its findings.”⁶⁵ In Massachusetts, a proposal for the establishment of a continuing commission is now pending.⁶⁶

Briefly stated, the philosophy of the movement for continuous revision is that, in practice, neither periodic revision nor use of the piecemeal amending procedure has been able to accomplish the objective of keeping the state's basic law updated. While in all about us, change abounds, government alone has seemed to remain stationary, quite unresponsive to the currents of change in evidence in other aspects of community life. General revisions have been infrequent, and difficult if not impossible to obtain, while social, political, economic and technological changes were continuing at an accelerated pace.

In North Carolina a few years ago, the very dubious claim was made that, by adopting some 125 amendments affecting the content of all but one article of the Constitution in the last ninety years, continuous revision had, in fact, been achieved.⁶⁷ The difficulty is not, in North Carolina or in most other states, that the state constitutions are not amended. They are; in fact, they are amended too much and often in the wrong ways. In 1964, the existing state constitutions had been modified to the tune of some 3,718 times—South Carolina with 250, California with 350, Louisiana with 439—to cite a few of the worst offenders. The constitutions of Alabama, Florida, New Hampshire, New York, Oregon, South Carolina and Texas had each been amended over ninety times. The average number of amendments for each state was seventy-eight.

Not only is the number excessive beyond all reason, but the content of the amendments themselves is of such a haphazard and miscellaneous character as to bear no relation to any program for the orderly revision and updating of the constitution. Most of the amendments deal with local matters, often in individual subdivisions. Many are needed only because quantities of statutory provisions have been permitted to become a part of the constitution. To call such a process constitutional revision in any meaningful sense is simply to ignore the facts.

As applied in New York, the idea of continuous revision had a quite different connotation. Confronted by the same situation that had de-

65. *Interim Report*, p. 57. Austin, March 1959.

66. Legislative Research Council, *Report Relative to Constitutional Revision Procedure*. Senate No. 845. Boston, March 1966.

67. See Gardner, Dillard S., *The Continuous Revision of Our State Constitution*. *North Carolina Law Review*, April 1958, pp. 297-313.

veloped in Kentucky—popular rejection of a proposal to call a constitutional convention—the state legislative leaders seized upon this concept as a means of guiding and giving momentum to the kind of continuous revision that would make the Constitution “more responsive to the needs of modern life.” For this purpose, they established a Special Legislative Commission on the Revision and Simplification of the Constitution (they might have started with the name of the Commission!), which did some excellent work, and in the end, accomplished a good deal. The Commission filed two reports, the first of which proposed a thorough revision of three articles of the Constitution. Taken together, these revisions which were, in time adopted, accomplished an 18 percent reduction in the wordage of the document. With the submission of the second report, the Commission completed its assigned task of proposing revision and simplification of the Constitution, an accomplishment to which informed persons gave enthusiastic approval.

The Committee on Law Reform characterized it as “a unique and signal service to the people of the State,” while the *New York Times* expressed editorially its “greatest admiration for the work the Peck Commission is doing and has done, work that is being watched as a model by other states sadly needing the same simplification.”⁶⁸ At the same time, the editorial expressed the view that still more accomplishment was possible: “A line-by-line examination of the new constitutional text suggests, however, that still further abbreviation through deletion of useless words is feasible and desirable. A good newspaper copyreader ought to be seated beside the lawyers.”

In New York, all seemed to be going well until the leadership began to have qualms about spending tax revenues in preparation for a constitutional convention that the electorate had said that it did not want, and cut off further financial support for the Commission. Many of the Commission’s recommendations were favorably considered by the Legislature, placed on the ballot and approved by the electorate. It was estimated that no less than 4,000 words were by this process deleted from the Constitution.

In this connection, the experience of Minnesota is also worth noting. In this state, a Constitutional Commission turned in its report with recommendations. While these were not immediately acted upon, they

68. The State Constitution, February 27, 1961.

were not abandoned or forgotten, for during the ensuing decade, many of them were considered and adopted.⁶⁹ As a result of these amendments, it is reported, the Governor and the judiciary have been strengthened. Municipalities have home rule, and other local units live in a more congenial constitutional climate than formerly existed; other Commission proposals are still pending. Professor Mitau, while pleased that change is no longer impossible, expressed the fear that the increased willingness among legislators and the public to support these proposals may be motivated less by enthusiasm for reform *per se* than by a fear that otherwise a constitutional convention—the most drastic alternative hovering in the background of Minnesota politics—might be forced upon them.

Revision Now

In spite of these encouraging bits of evidence from a few states, overall accomplishments, when measured against the magnitude of the need, are meagre indeed. While the need for constitutional modernization has been steadily increasing during recent decades, progress by any method has moved at a snail's pace. Continuous revision has yet to demonstrate its effectiveness. Only two comprehensive revisions by commission have been accomplished since 1929. In the quarter century between 1940 (or 1938, to be exact) and 1965, conventions making comprehensive revisions were held in only four states—New York (1938), Missouri (1943), New Jersey (1947), and Michigan (1962). Conventions to frame new constitutions were held in three territories: Hawaii (1950), Puerto Rico (1951), and Alaska (1955). Two of these territories have since become states, the third a commonwealth.

But the pace is accelerating a little. New Hampshire held an unlimited constitutional convention in 1964, Connecticut and Rhode Island in 1966. As a result, amendments have been passed in New Hampshire that mark some progress toward the modernization of its constitution, and Connecticut has in effect already its first new constitution since 1818. A convention is definitely scheduled for New York in 1967. In Idaho and Maryland where revisory or preparatory commissions have been hard at work, conventions now appear to be highly probable. The Maryland referendum was held this fall. The

69. See Mitau, G. Theodore, *Constitutional Change by Amendment: Recommendations of the Minnesota Commission in Ten Year Perspective*. *Minnesota Law Review*, January 1960, pp. 461-483.

West Virginia legislature, on the last day of its 1965 session, authorized a referendum this fall. A preparatory Revision Assembly is meeting periodically in Kentucky, and it is reported that the prospects look good. There are revision movements at various stages of development in a number of other states.

The chances are that most really serious efforts for revision will be undertaken by convention or commission, chiefly by the former. In the light of this conclusion, it is not inappropriate to raise the question as to what the function of such a body ought to be, and how they might best proceed to accomplish it. One obvious answer is for the several committees to concentrate on a careful review of those articles or sections of the constitution assigned to them, with a view to accomplishing several objectives: (1) eliminating provisions that are no longer suitable, that are largely legislative in character, or that are—or conceivably might constitute—a barrier to effective governmental action; (2) examining the phraseology of provisions to be retained; or (3) identify points at which new provisions are needed to meet new problems arising from changed conditions.

Here, the point may be stressed that all this is necessary and proper. It has to be done, to be sure, but this is not the whole job, or even the most important part of it. Some consideration should be given to the problem of the condition in which the states now find themselves. Some of the current literature is beginning to show an awareness of the fact that all is not well with the states. In fact, a short time ago, two political scientists from Michigan State University began an article with the simple declaration: "State government is sick."⁷⁰

Evidence has been accumulating for sometime that this is true. It comes to light in quite unexpected ways. In the summer of 1966, at the time of the Governors' Conference in Los Angeles, the columnists all sensed that something was wrong, their stories appearing under such headlines as these:

The Governors Seem Out of the Mainstream

David S. Broder, *New York Times*, July 10.

70. See Adrian, Charles R., and Press, Charles, Why Our State Governments Are Sick. *Antioch Review*, v. 24, Summer 1964, pp. 149-165. Also: Reichley, James, *States in Crisis, Politics in Ten American States, 1950-1962*. University of North Carolina Press, Chapel Hill, 1964, and the forthcoming report of former Governor Terry Sanford's project, A Study of the American State. For another interesting analysis, see Armbrister, Trevor, The Octopus in the State House. *Saturday Evening Post*, February 12, 1966, pp. 25-29, 80.

The Declining Governors

Roscoe Drummond, *Washington Post*, July 8.

Governors Doubt Own Usefulness

Paul Hope, *Washington Evening Star*, July 11.

But, if it is true that the states are sick, what is the nature of their illness? What can be done about it? And what difference does it make, anyway? One could write at length on these questions, as many have. The comments here will be limited to the subject of this paper, the state constitutions.

There are many factors contributing to the present plight of the states. Some are not the fault of the states, being inherent in the state system as it functions under present day conditions. Others are clearly due to the inability or unwillingness—or both—of the states to respond in any effective way to current governmental needs. For these failures, the states cannot escape responsibility; in fact, it is very often the states who are their own worst enemy. Conspicuous among their failures is their failure to revise and modernize their constitutions.

On this point, there appears to be general agreement among informed people. It has been emphasized repeatedly "that, with few exceptions, our states are attempting to provide governmental services under Twentieth century conditions, under the outmoded and hampering restrictions which abound in Eighteenth and Nineteenth century constitutions."

A decade ago, the Commission on Intergovernmental Relations (Kestnbaum) found "a very real and pressing need for the states to improve their constitutions," and urged that this was "a first step in the program to achieve the flexibility required to meet the modern needs of their citizens." This problem has been recognized by the Governors' Conference as a pressing one, because existing constitutional limitations impede their progress in some matters, prevent the taking of effective action with regard to others. The Eighth American Assembly recommended in 1958 that "those states which have not already done so should take steps to secure a modernized, short, basic state constitution; further, that in every state citizens be given the right to call constitutional conventions at periodic intervals."

Not only is constitutional modernization desirable in the decade of the Sixties, it is imperative. The need is urgent and it is immediate. As Robert S. Steadman said in a memorandum that came recently to

my attention, "It is my conviction that the substantive failures of so many state governments are directly related to structural defects found in all three branches, Executive, Legislative, and Judicial."

The main task of such a body, however, is to envision a state constitution for an expanding future—Justice Cardozo's phrase was "to state principle of government for an expanding future." This is not easy, because in the first place, there are limits to what can be done constitutionally to solve or facilitate the solution of current problems, or those that are foreseeable for the future. But there is an obligation to try, and try hard.

This is an exciting period in history, and an exciting time in which to live. It is a period which presents an extraordinary number of new and difficult problems. But it also presents challenges and opportunities that far exceed in size and long-term significance those of earlier and more settled days:

The Nation's role in world affairs provides a compelling motivation for all Americans to put their governmental houses in order. Many new and developing countries look to the United States for leadership and example in the organization and functioning of democratic institutions.

American life is being urbanized at a breathtaking speed.

Automation is revolutionizing many aspects of our accustomed way of life.

Civil rights has made more progress in the past decade than in the preceding century.

American federalism is in a period of tremendous change. Twenty-five new grant-in-aid programs were enacted last year. Some 170 such programs now involve an annual expenditure of approximately \$15 billion. The success of these programs is to a large degree dependent on strong and effective state and local government.

Much of the old rigidity that thwarted progress in the past is gone. There is abroad in the land a willingness to think new thoughts and to accept change.

What does all this mean to American state government? It means a great deal. It has a tremendous bearing on the work of those who, as members of constitutional conventions or commissions, seek to revise old constitutions or to write new ones. These changes in American

society affect the nature of the job, and how they undertake to discharge their responsibilities.

The point is now being repeatedly emphasized in many quarters that constitutional revision is the first essential in restoring the effective functioning of state governments, and possibly even for their preservation. There is no better time to begin than now. Later on could be too late.

The Founders of our governmental institutions discharged their responsibilities in this area ably and well, so much so that all Americans can be grateful for the excellent governmental heritage that is theirs. These men tackled the problems of their day with courage and imagination, with wisdom and foresight. In confronting the problems of this time, the present generation can afford to do no less. It must deal with the problems of this day and age with a comparable degree of imagination, with a willingness to move ahead, and even—if need be—to take some chances. They did. Only by so doing can this generation deserve from those who will succeed it a degree of respect comparable to that which present-day Americans accord to those who established and have since preserved and developed the Nation's governmental heritage.

TABLE I

SUMMARY INFORMATION ON
CONSTITUTIONAL CONVENTIONS IN SELECTED STATES SINCE 1937—PART I

	Alaska	Connecticut	Hawaii	Michigan	Missouri
Year	1955/56	1965	1950	1961/62	1943
Number of delegates	55	84	63	144	80
Apportionment of delegates	55 according to 4 judicial districts (31); 17 recording districts (17); at large (7)	7 from each party in each of 6 Congressional districts	21 at large in representative districts; 42 in precinct groupings	One from each senatorial and assembly district on a partisan basis	One of each party from each of 34 senatorial districts and 15 at large
Compensation of delegates	\$20 per diem and actual travel costs		\$1,000 and \$.20 per mile for travel	\$1,000 per month up to a maximum of \$7,500 plus \$.10 per mile for travel	
Meeting place					x
State capitol		x			
University campus	x				
National Guard Armory			x	x	
Civic center					
Type of Convention					
Limited					
Unlimited	x	x	x	x	x
Number of Committees					
Temporary		3	37	1	2
Permanent	15	3	20	14	26
Size of staff			78	75	127
Duration (in days)	75	120	78	70	215
Cost (amount appropriated)	\$360,000	\$500,000	\$295,000	\$2,266,176	\$829,000

TABLE I

SUMMARY INFORMATION ON
CONSTITUTIONAL CONVENTIONS IN SELECTED STATES SINCE 1937—PART II

	New Jersey	New York	Puerto Rico	Rhode Island	Tennessee
Year	1937	1938	1951	1964/66	1952/53
Number of delegates	81	168	92	100	
Apportionment of delegates	As many from each county as it had members in the legislature	3 from each senatorial district and 15 at large			
Compensation of delegates	Expenses not in excess of \$10 per diem; no compensation			No compensation	\$10 per diem and \$5 per diem expense allowance plus travel
Meeting Place					
State capitol		x	x	x	x
University campus	x				
National Guard Armory					
Civic center					
Type of Convention					
Limited	x		x		x
Unlimited		x		x	
Number of Committees					
Temporary	3	10			
Permanent	9	34	7		
Size of staff	50	301			
Duration (in days)	22	71	29		90
Cost (amount appropriated)	\$350,000	\$1,134,327	(Not Available)

TABLE VII

SUMMARY INFORMATION ON
CONSTITUTIONAL COMMISSIONS IN SELECTED STATES SINCE 1943—PART I

	California	Florida	Georgia	Kansas	Kentucky	Massachusetts
Year	1947	1955	1943	1957	1949	1962
Name	Joint Interim Committee on Constitutional Revision	Constitutional Review Committee	Constitutional Revision Commission	Joint Commission on Constitutional Revision	Temporary Constitutional Review Commission	Council for Constitutional Reform
Established by	Legislature		Legislature	Governor	Governor	Citizen group
Number of Members	20		23	21	7	Statewide
Year	1964	1958	1964	1961	1950	1962
Name	Constitution Revision Commission	Permanent Constitution Revision Committee	Constitutional Revision Committee	Commission on Revision of the Constitution	Permanent Constitutional Revision Commission	Constitutional Commission
Established by	Legislature	Legislature	Governor and Legislature	Governor	Legislature	Legislature
Number of Members	60 citizens 24 legislators	5	28		7	16
Year					1956	
Name					Legislative Research Commission	
Established by					Legislature	
Number of Members					25	
Year					1964	
Name					Constitution Revision Assembly	
Established by					Legislature	
Number of Members					50	

TABLE II

SUMMARY INFORMATION ON
CONSTITUTIONAL COMMISSIONS IN SELECTED STATES SINCE 1943—PART II

	Minnesota	New York	Oregon	Pennsylvania	Texas	West Virginia
Year	1948	1956	1961	1957	1957	1957
Name	Constitutional Commission	Temporary State Commission on the Constitutional Convention	Constitution Review Commission	Commission on Constitutional Revision	Citizen's Advisory Committee on the Revision of the Constitution	Commission on Constitutional Revision
Established by	Legislature	Governor and Legislature	Legislature	Governor and Legislature	Governor and Legislature	Governor and Legislature
Number of Members	21	15	17	15	18	48
Year		1959				
Name		Temporary State Commission on Revision and Simplification of the Constitution				
Established by		Governor and Legislature				
Number of Members		15				