

# State Constitutional Law: Some Representative Decisions

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# STATE CONSTITUTIONAL LAW: SOME REPRESENTATIVE DECISIONS

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In an attempt to encourage a dialogue on the chronically neglected subject of state constitutional law, a review of state constitution making in the past quarter of a century was recently published.<sup>1</sup> The present paper is an attempt to complement that description of the problems and trends in this area with a summary of fundamental and representative judicial commentary. These two reviews—one relating to the constitutions themselves and the other to the decisional law on the subject—it is hoped will provide background for a continuing discussion of state constitutionalism in this and other professional journals.

Almost a century ago Thomas M. Cooley in his now classic (although now obsolete) treatise pointed out that the American characteristic of reducing constitutional provisions to writing had three major consequences. In the first place, it set discernible limits to the areas where the people were disposed to “not only tie up the hands of their official agencies, but their own hands as well.” Secondly, a written constitution either specifically or by implication vested in the legislature “as the department most nearly representing its sovereign authority” the state’s power to amend, revise or supplant its existing document. Finally, a constitution reduced to a written text made necessary the judicial function of review and interpretation.<sup>2</sup>

Judicial review, under this definition, is an essential element in state constitutional law, as it is in the analogous federal area. The body of decisional law for state constitutions, quite as much as for the Constitution of the United States, is thus as significant as the text of the instrument itself. But to the degree that state constitutions differ from that of the nation—e.g., in character, theory and subject-matter—the differing principles of decisional law need to be recapitulated. While this will be elementary to the esoteric minority of scholars who have dealt with

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1. Graves, *State Constitutional Law: A Twenty-five Year Summary*, 8 Wm. & Mary L. Rev. 1 (1966).

2. 1 COOLEY, *CONSTITUTIONAL LIMITATIONS* 81 (8th ed. Carrington 1927).

the subject, it is hoped that it will help to enlarge the circle of the discussion in the future.

### SOME BASIC PRINCIPLES

#### *The Constitution as Original Legislation.*

The constitutions of forty-eight of the fifty states<sup>3</sup> have preambles which proclaim that "we, the people" of the particular state have established the instrument in question. Many of the constitutions stipulate in their legislative article that the enacting clause of statutes must proclaim that "the people" or the legislature or the people as represented in the legislature constitute "the sovereign authority by which they are enacted and declared to be law."<sup>4</sup> This suggests that in most<sup>5</sup> instances the same popular sovereignty originates both the constitution and the general laws of the state. Superficially, at least, this fact would tend to support an argument that the state constitution is an act of organic legislation subject to established rules of statutory construction.<sup>6</sup>

A fact more substantially supporting the proposition is the length and variegated subject matter contained in most state constitutions, and the tendency to treat most if not all of it as self-executing.<sup>7</sup> Courts have been at pains to stress the basic differences between the organic instrument and other legislation by suggesting that, unlike an ordinary statute, a constitution "is intended not merely to meet existing conditions but to govern future contingencies."<sup>8</sup> A constitution, said the Virginia Supreme Court of Appeals in 1952, "preserves in basic form the pre-existing laws, rights, mores, habits, and modes of thought and life of the people as developed under the common law and as existing at the time of its adoption to the extent stated therein."<sup>9</sup>

Corroborating the Virginia view, and in terms reminiscent of Edward

3. Vermont and West Virginia do not have preambles, but the tenor of their constitutions is consistent with the rest of the states.

4. State ex rel. Gouge v. Burrow, 119 Tenn. 376, 104 S. W. 526 (1907).

5. *But cf.*, Montana Const., Art. V, § 1, where "the people" enacting clause is reserved for initiated legislation, while in Art. V, § 20 the legislative enacting clause is required for law enacted by bill. *Cf.* Vaughn & Ragsdale Co. v. Bd. of Equalization, 109 Mont. 52, 96 P. 2d 420 (1939).

6. *Cf.* Yelle v. Bishop, 347 P. 2d 1081 (Wash., 1959).

7. *Cf.* notes 27-29, *infra*.

8. Kraus v. City of Cleveland, 94 N. E. 2d 814 (1950), *aff'd.* 89 Ohio App. 504, 96 N. E. 2d 314 (1950), *app. dism.* 155 Ohio St. 98, 97 N. E. 2d 549 (1951).

9. Dean v. Paolicelli, 194 Va. 219, 72 S. E. 2d 506 (1952).

S. Corwin's concept of the "higher law" doctrine,<sup>10</sup> the Tennessee Supreme Court in 1962 observed: "A constitution is not the beginning of a community, nor does it originate and create institutions of government; instead, it assumes the existence of an established system which is to continue in force and is based on pre-existing rights, laws and modes of thought."<sup>11</sup> A more pragmatic differentiation has been offered by the Alabama court: A constitution is paramount legislation, and "to it all rules of evidence, procedure and expediency in conflict with its mandates and prohibitions must yield."<sup>12</sup> It is "the objective standard of conduct by which all departments of the government shall be bound."<sup>13</sup>

The question of uniformity or consistency of interpretation of a constitutional provision has been vigorously debated; in view of the frequency with which state constitutions are amended or supplanted, it may be argued that state courts are more justified in clinging to the doctrine that the provision "does not change with times or conditions."<sup>14</sup> The tendency of state courts in the twentieth century to construe both constitutions and statutes with reasonable liberality is circumscribed by the basic rule that where the constitutional clause is free of all ambiguity it will be given a strict construction.<sup>15</sup> Another basic rule of statutory interpretation—that the "mischief to be remedied" is a presumptive guide to the intent of the framers—lends an essential degree of flexibility. Thus in *Adams v. Bolin*<sup>16</sup> the Arizona Supreme Court concluded that the constitutional restraint upon legislative amendment of initiated measures was to be limited to those measures adopted by less than a majority of the electorate. In *Lancaster v. Board of Commissioners*<sup>17</sup> the Colorado court held that a prohibition of changes in salary affected the officeholders rather than the offices themselves, so that a former incumbent could be reappointed to an office after its salary had been increased. The purpose of the constitutional rule being to guard against legislative in-

10. Corwin, *The "Higher Law" Background of American Constitutional Law*, 42 Harv. L. Rev. 149, 365 (1928-29).

11. *Washington County Election Comm. v. Johnson City*, 350 S. W. 2d 601 (1962).

12. *Alexander v. State ex rel. Carver*, 150 S. E. 2d 204 (1963).

13. *In re Opinion of the Justices*, 85 N. E. 2d 761 (Mass., 1949); and *cf. Wheeler v. Board of Trustees*, 200 Ga. 323, 37 S. E. 2d 322 (1946).

14. *Trav. Ins. Co. v. Marshall*, 124 Tex. 45, 76 S. W. 2d 1007 (1934); *cf. also State ex rel. Clithero v. Showalter*, 159 Wash. 519, 293 P. 1000 (1930), *app. dismissed*, 284 U. S. 573 (1931).

15. *Cf. State ex rel. Willis v. Montfort*, 93 Wash. 4, 159 P. 889 (1916).

16. 74 Ariz. 269, 247 P. 2d 617 (1952).

17. 115 Colo. 261, 171 P. 2d 987 (1946).

fluence upon officeholders, "the limit of the purpose makes the limit of the rule."

The Illinois Supreme Court in *People ex rel. McDavid v. Barrett*<sup>18</sup> ruled that a statute granting appropriations to widows of officeholders for the remainder of the unexpired term did not violate the constitutional rule against increasing emoluments to incumbents; and the Texas court in *Farrar v. Board of Trustees*<sup>19</sup> came to a similar conclusion. Thus a narrow construction of a constitutional restraint permits a wider range of legislative action. The Missouri Supreme Court summarized the application of this principle in *State ex rel. Dalton v. Dearing*:<sup>20</sup> The precise phraseology of the constitution "is fundamental, and not open to change, except insofar as interpretation is necessary to arrive at the meaning of the fundamental act itself. When that meaning has been ascertained it cannot be changed even by statute." But to determine meaning, "the organic law is subject to the same general rules of construction as other laws."

The rules of construction applied to state constitutions, accordingly, are rules of statutory construction, with somewhat more deference to the presumption of dignity and weight derived from the fundamental nature of the instrument. Thus, apparent conflicts in different provisions within the same document will be construed, if possible, to give proper effect to both rather than to declare one to be invalid in the light of the other.<sup>21</sup> Courts consistently declare that "no one provision of the constitution is to be separated from all the others and to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument."<sup>22</sup>

Since it is almost universally asserted that a state constitution is a limitation of power,<sup>23</sup> it follows, first, that any clause limiting a power is in itself evidence of the existence of the power; and second, that legislative enactments themselves are to be presumed constitutional if there is no express constitutional prohibition applicable to the subject of the enactment. "Whatever the people have not, by their constitution, restrained

18. 370 Ill. 478, 19 N. E. 2d 356 (1939).

19. 150 Tex. 572, 243 S. W. 2d 688 (1951).

20. 364 Mo. 475, 263 S. W. 2d 381, 385 (1954).

21. *Tucker v. State*, 218 Ind. 614, 35 N. E. 2d 270 (1941); *cf. Meyers v. Flournoy*, 209 La. 812, 25 S. 2d 601 (1946); *Willis v. Kalmbach*, 109 Va. 475, 64 S. E. 342 (1909).

22. *City of Portsmouth v. Weiss*, 145 Va. 94, 133 S. E. 781 (1926).

23. *Cf. Morgan v. Commonwealth*, 168 Va. 731, 191 S. E. 791 (1937), and the cases cited in 19 AM. JUR. 2d, *Constitutional Law*, § 17.

themselves from doing, they, through their representatives in the legislature, may do," declared the Colorado court,<sup>24</sup> while the Texas court concluded that where the state constitution in terms prohibited a statutory remedy by "special law" it left the remedy available by general law.<sup>25</sup>

Thus the state constitution is logically a part of the legislative process of the state, and the construction which the legislature itself places upon its organic instrument is given great weight in judicial interpretation.<sup>26</sup> Moreover, since the records of convention debates are fortunately more subject to preservation than those of ordinary legislation, the courts will also rely heavily upon these proceedings for interpretation.<sup>27</sup> Although most, and perhaps all, of the provisions of a state constitution are self-executing, it is conceded that supplemental legislative action is permissible.<sup>28</sup> The primary concern of modern judicial interpretation, however, is that the legislature should not, by its action or inaction, frustrate any specific provision in the constitution.<sup>29</sup>

#### *Amending, Revising and Supplanting Constitutions.*

In less than two centuries, the people of the fifty states have adopted more than 130 constitutions, and have copiously amended them in the intervals between adoptions. The amending process itself may take one of three forms—either by legislation, by convention, or by initiative. The authority of the people to change their fundamental instrument "is unlimited except where prohibited by the Federal Constitution or in conflict with federal law enacted pursuant to constitutionally granted authority," the Arizona court has ruled.<sup>30</sup> Even if the people purport to impose limi-

24. *District Landowners Trust v. Adams County*, 104 Colo. 146, 89 P. 2d 251 (1939).

25. *Jones v. Williams*, 121 Tex. 94, 45 S. W. 2d 130 (1931); and *cf.* *People v. Hutchinson*, 172 Ill. 486, 50 N. E. 599 (1898); *Postelwaite v. Edson*, 102 Kan. 619, 171 P. 773 (1917).

26. *Cf.* *Almond v. Day*, 197 Va. 782, 91 S. E. 2d 660 (1956); *King & Queen County v. Cox*, 155 Va. 687, 156 S. E. 755 (1931); *Cherey v. Long Beach*, 282 N. Y. 382, 26 N. E. 2d 945 (1940).

27. *State v. Lyons*, 40 Del. 77, 5 A.2d 495 (1939); *Household Fin. Corp. v. Shaffner*, 356 Mo. 808, 203 S. W. 2d 734 (1947).

28. All such legislation, however, is considered subordinate to the constitutional clause. *Cf.* *State ex rel. Randolph County v. Walden*, 357 Mo. 167, 206 S. W. 2d 979 (1947); and *cf.* *Roberts v. Spray*, 71 Ariz. 60, 223 P. 2d 808 (1950); *People v. Western Air Lines*, 42 Calif. 2d 621, 268 P. 2d 723 (1954), *app. diss.*, 348 U. S. 859 (1954).

29. *Cf.* *Swift & Co. v. Newport News*, 105 Va. 108, 52 S. E. 821 (1906); *Morgan v. Board of Supervisors*, 67 Ariz. 133, 192 P. 2d 236 (1948); *People v. Carroll*, 3 N. Y. S. 2d 686, 171 N. Y. S. 2d 812, 148 N. E. 2d 875 (1958).

30. *A. F. of L. v. American Sash & Door Co.*, 67 Ariz. 20, 189 P. 2d 912 (1948).

tations upon their own amending power, a failure to comply literally with technical or unimportant features of the limitation should not be permitted to frustrate the popular will;<sup>31</sup> and while repeals by implication are not encouraged, the court is disposed in instances of manifest conflict between later provisions and earlier ones to find that the later amendment has impliedly repealed or abrogated the earlier provision.<sup>32</sup>

There is some conflict of authority on the effect of amendments upon the existing instrument; the Louisiana appellate court in 1961 ruled that an amendment was not to be regarded as part of the original document, but as a codicil altering or rescinding part of the original,<sup>33</sup> while the Texas Supreme Court in 1966 declared that the constitution was to be read as a whole and as if every part had been adopted at the same time and all parts reconciled to each other.<sup>34</sup> The more common statement of the effect of amendments is that the primary obligation of the court is to reconcile the amendment and the original but that failing this the amendment is to prevail.<sup>35</sup> Every reasonable presumption, both of law and fact, is to be indulged as to the constitutionality of a constitutional amendment once it has been adopted;<sup>36</sup> and where one part of an amendment is found valid while another is found void, the court will undertake to hold the parts severable in order to effectuate the valid part.<sup>37</sup>

The constitutionality of a constitutional amendment may turn upon the question of the validity of the procedure followed in submitting the amendment to the electorate,<sup>38</sup> or it may turn upon a conflict between the state instrument and the Federal Constitution.<sup>39</sup> While, as in federal constitutional law, the courts continually admonish themselves that the wisdom of an amendment or other legislative act is not a judicial question, the greater variety of methods of amendment in many state constitutions imposes upon state courts a greater responsibility for adjudicating the issue of validity of the amendment itself.<sup>40</sup> The general rule of statutory construction, that an amendment subsequently found invalid

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31. *Keenan v. Price*, 68 Idaho 423, 195 P. 2d 662 (1948).

32. *Egbert v. City of Dunsieith*, 74 N. D. 1, 24 N. W. 2d 907 (1946).

33. *Fullilove v. Cas. Co. of New York*, 129 S. 2d 816 (1961).

34. *Purcell v. Lindsey*, 314 S. W. 2d 283 (1958).

35. Cf. *State ex rel. Lein v. Sathre*, 113 N. W. 2d 679 (N. D., 1964).

36. *Opinion of Justices*, 133 A. 2d 790 (N. H. 1966).

37. *Carpenter v. State*, 139 N. W. 2d 541 (Neb., 1966).

38. Cf. *Livermore v. Waite*, 102 Calif. 113, 36 P. 424 (1894).

39. Cf. notes 60-64 *infra*.

40. Cf. *People v. Sours*, 31 Colo. 309, 74 P. 167 (1903).

does not revive the portions of the instrument as they existed before the amendment, applies to state constitutional law.<sup>41</sup>

Amendments are generally interpreted as having prospective rather than retrospective effects,<sup>42</sup> but courts have not hesitated to hold that where the intention of the framers was not to the contrary the provisions may apply to pending litigation and criminal proceedings.<sup>43</sup> This holding is more generally applied to new constitutions, since the adoption of an entire new organic law means the extinguishing of the basis of judicial process under the prior organic law. Some hypothetical issues of due process and equal protection under the fourteenth amendment are obvious in this circumstance, but no litigation has developed to bring into effect any enlightening decisional rules on the subject.

The general rule is that when a new constitution is adopted, all legislation inconsistent with any of its provisions is rendered of no effect.<sup>44</sup> But a new constitution cannot impair a contractual obligation created under prior state law which is found to be within the protection of the federal constitutional prohibition of impairment of such obligations.<sup>45</sup> Most new constitutions include a preservation clause continuing in effect all statutes not inconsistent with themselves;<sup>46</sup> and the common law of the state is presumed to continue in effect unless a provision of the new instrument is in derogation thereof.<sup>47</sup>

### *Relationships Between Past and Present Constitutions.*

Because of the frequency with which, since 1776, states have changed their organic law—even though a chronic complaint has to do with the archaic nature of many contemporary constitutions—a unique question in state constitutional law has to do with the relationships between the present instrument and prior ones. Particularly when a body of decisional law has been developed over a period of time extending through several such changes, the question is one of practical urgency.

Where a provision in the contemporary constitution is the same or substantially the same as in a prior constitution, and there are no cir-

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41. *Davis v. Synhorst*, 225 F. Supp. 689 (D. C. Iowa, 1964).

42. Cf. *Robinson v. Ind. A. L. & M. Co.*, 128 Ark. 550, 194 S. W. 870 (1917).

43. *Cassard v. Tracy*, 52 La. Ann. 835, 27 S. 368 (1899); *State v. Bland*, 354 Mo. 391, 189 S. W. 2d 542 (1945); *State v. Richardson*, 47 S. C. 166, 25 S. E. 220 (1896).

44. *Criswell v. Mont. C. R. Co.*, 18 Mont. 167, 44 P. 525 (1896).

45. Cf. *Vet. Welfare Board v. Riley*, 189 Calif. 159, 208 P. 678 (1922); *Nelson v. Haywood County*, 87 Tenn. 781, 11 S. W. 885 (1889).

46. *Leser v. Lowenstein*, 129 Md. 244, 98 A. 712 (1916).

47. Cf. *generally* *Jelm v. Jelm*, 155 Ohio St. 226, 98 N. E. 2d 401 (1951).



cumstances suggesting a contrary intention on the part of the framers of the new instrument, the courts will hold themselves bound to both the legislative and judicial construction of the provision under the prior constitution.<sup>48</sup> Any changes in the wording of a provision in the new constitution will be presumed to have been intentional;<sup>49</sup> but where there is reasonable doubt as to the meaning of the provision in the new constitution, reference may be had to the language and the construction of the analogous provision in the prior constitution.<sup>50</sup>

Historically, new states in the westward movement of the nation borrowed in whole or in part from the constitutions of older states in preparing their first constitutions. The courts have stated as a general rule that the adoption of a specific provision from the specific constitution of another state carries with it the construction of that provision as devised by the court of last resort in the original state.<sup>51</sup> Where the evidence is not conclusive as to the specific instrument from which the provision was borrowed, however, the construction of the courts of the other state or states is only advisory as to the legislature and not binding upon the judiciary.<sup>52</sup>

However, in construing a constitutional provision in one state, decisions of the courts in any other state having substantially the same provision will be given great weight.<sup>53</sup> But when a grant is made to a private corporation under one constitution and the corporation merges with another after this granting policy has been abolished under a new constitution, the merged entity cannot claim the benefits under the prior instrument.<sup>54</sup> While a rule of law fixed under one constitution applies under succeeding constitutions when the provision on which it is based is the same,<sup>55</sup> a change in public policy inferred from a change in the constitutional provision qualifies or terminates the effect of the rule.

A question peculiar to state constitutions, with their multiplicity, arises when a given principle is adjudicated under one constitution, the principle itself is unmentioned in a succeeding constitution, but is re-

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48. Cf. *Love v. Wilcox*, 119 Tex. 256, 28 S. W. 2d 515 (1930).

49. *Sherrill v. O'Brien*, 188 N. Y. 185, 81 N. E. 124 (1907).

50. *Newport News v. Woodward*, 104 Va. 58, 51 S. E. 193 (1905).

51. *State ex rel. Gerry v. Edwards*, 42 Mont. 135, 111 P. 734 (1910).

52. *Parkinson v. Watson*, 4 Utah 2d 191, 291 P. 2d 400 (1955).

53. *Norfolk & P. T. Co. v. Ellington*, 108 Va. 245, 61 S. E. 779 (1908).

54. *Adams v. Yazee & Miss. Valley R. Co.*, 77 Miss. 194, 24 S. 200 (1898); *aff'd*. 180 U. S. 1 (1900), *reh. den.* 181 U. S. 580 (1901).

55. *Trav. Ins. Co. v. Marshall*, 124 Tex. 45, 76 S. W. 2d 1007 (1934).

introduced into a third. The Missouri Supreme Court, in *Rathjen v. Reorganized School Dist.*,<sup>56</sup> had occasion to comment on such a situation. In this case a phrase, "for purposes of education" had been used in the 1875 constitution and a substantial body of case law had grown up around it; then in 1945 the new constitution substituted the phrase, "for school purposes." A 1950 amendment then elaborated upon the powers of the state with reference to educational expenditures, and in a test case it was contended that the case law developed under the 1875 constitution was controlling. The court rejected the argument, observing that a 1950 amendment made presumably in knowledge of the altered language of a 1945 constitution cut off the adjudication under the 1875 instrument.

Obviously, a court may rely upon constructions under earlier constitutions relating to provisions which have been continued unchanged into the text of succeeding constitutions.<sup>57</sup> Generally, too, the courts will avoid interfering with a legislative construction which tends to rely on interpretations under superseded instruments, unless "public mischief" will be encouraged by the practice.<sup>58</sup> And where the intention of the framers of a later constitution or amendment is manifestly to alter the meaning of the prior language, the court places its primary reliance upon the demonstrated intent of the later framers.<sup>59</sup>

#### *Relationships to Federal Constitution and Law.*

A final fundamental ingredient in state constitutional law is the matter of limitations placed upon the state instrument by the provisions of the Constitution of the United States and the federal laws enacted in pursuance thereof. There are two definite areas of decisional law relating to this matter. The one concerns the case of a manifest conflict between the federal instrument and the state instrument, where the latter must yield.<sup>60</sup> The second concerns a provision in the federal constitution or law which has been incorporated verbatim into the state document. In such situations, a state which adopts the language of federal law or the United States Constitution, adopts with it the interpretation which it has received in the federal courts.<sup>61</sup>

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56. 365 Mo. 518, 284 S. W. 2d 516 (1955).

57. In re Advisory Op., 112 S. 2d 843 (Fla., 1959).

58. *Franklin Nat. Bank v. Clark*, 212 N. Y. S. 2d 942 (1961).

59. *Diamond v. Parkersburg-Aetna Corporation*, 122 S. E. 2d 436 (W. Va., 1961).

60. Cf. *Russell v. Croy*, 164 Mo. 69, 63 S. W. 849 (1901).

61. *State v. Henry*, 37 N. M. 536, 25 P. 2d 204 (1933).

Familiar and universally used constitutional phrases—"due process" being the best example—must be given the same meaning in all jurisdictions, and therefore tend to follow the definitions and applications of the federal courts.<sup>62</sup> Congressional acts passed under the authority of the Federal Constitution are part of the supreme law of the land, and override anything in the constitution and laws of any state which may be in conflict.<sup>63</sup> The supremacy clause of the Federal Constitution in effect makes such statutes part of the law of each state. As the Washington Supreme Court stated in *Exchange Nat. Bank v. United States*,<sup>64</sup> the duty of the state court is "not to determine what . . . Congress should have excepted [from a federal statute] but to determine what it has, for, enjoying the power to except those which it desires, its choice must stand unassailed when coupled with the right to make it."

The reapportionment decisions of the United States Supreme Court<sup>65</sup> have precipitated the greatest volume of constitutional rulings in this subject-area in this generation. The pressure which these decisions have put upon the federal courts to enter the arena of state government has been resisted through a variety of propositions. Yet the fact remains that where there is unavoidable conflict between national and state constitutions, the former prevails—a rule which obtained long before apportionment became a major element in constitutionalism.<sup>66</sup>

"A state may not deprive the Federal courts of the right and power to consider the validity of legislative enactments nor to review judicial decrees which involve the question of whether such action invades or upholds Federally guaranteed constitutional rights," the federal court in Kansas has declared.<sup>67</sup> And since the federal rule of law is that "effecting the will of the majority of the people of the state is the foundation of any apportionment plan,"<sup>68</sup> all state instruments, including constitutional amendments, relating to apportionment must be judicially evaluated in terms of the federal rule.

With the steady growth of the jurisprudence of the fourteenth amendment over the years, the subjects of federally guaranteed rights which must be accommodated by state constitutionalism have steadily

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62. Cf. *Mo. Pac. R. Co. v. Humes*, 115 U. S. 512 (1885); *Robertson v. State*, 63 Tex. Crim. 216, 142 S. W. 533 (1911).

63. *Bunch v. Cole*, 263 U. S. 250 (1923); *Re Guerra*, 94 Vt. 1, 110 A. 224 (1920).

64. 147 Wash. 176, 265 P. 722 (1928); *aff'd*, 279 U. S. 80 (1929).

65. Cf. cases beginning with *Baker v. Carr*, 369 U. S. 186 (1962).

66. *Kruidenier v. McCulloch*, 142 N. W. 2d 355, 361 (Ia., 1966).

67. *Long v. Avery*, 251 F. Supp. 541 (D. C. Kans., 1966).

68. *Sincock v. Duffy*, 215 F. Supp. 169 (D. C. Del., 1963).

increased. Apportionment followed upon the desegregation decisions,<sup>69</sup> and was followed by the right-to-counsel decisions.<sup>70</sup> These are all symptomatic of a steady change in American society from the decentralized and sometimes atomistic character of the past to the centripetal social and political economy of today. The effect of the new Federalism upon state constitutional law cannot yet be fully assessed, but it is obviously substantial.

These are the basic elements in the frame of reference for state constitutional law—its character as original legislation, the varied procedures for amending or replacing the instrument, the continuity or discontinuity of legal precepts in the succession of constitutions within the same state, and the overriding authority of federal constitutional law in an expanding area of jurisdiction. There remains for further examination the representative decisions concerning the major adjectival elements in the constitutionalism—the legislative, executive and judicial functions—and the general subject of intergovernmental relations, interstate and intrastate.

*(To be Continued)*

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69. Cf. cases beginning with *Brown v. Board of Education*, 347 U. S. 483 (1954).

70. Cf. cases climaxing in *Gideon v. Wainwright*, 372 U.S. 335 (1963).