State Constitutions VIII

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Last in a Series

Experts on state constitutions will not agree that any one state constitution is ideal.

Even those constitutions written in recent years are described as seriously defective. Faults include obsolete material, excessive detail, inconsistencies and contradictions, dispersion of subject matter, incorporation by reference to material outside the documents, and errors.

One reason state constitutions generally are beset with so many faults is the "need for the use of fundamental law to do some rather unfundamental thing," according to Dr. Bruce Mason and Dr. Heinz R. Hink, of Arizona State University.

The political scientists pointed out that under the federal constitution, the state governments have all powers not exclusively given the national government or specifically denied the states.

Mason and Hink said that in practice it has proven easier to expand the delegated or implied powers, to which the federal government is limited, than it has been to dam up all possible state action.

"Pressure groups, often nationwide, have operated x x x in most states, and x x x have secured protection through constitutional amendments," Mason and Hink pointed out. "Past history in many states has destroyed a great deal of confidence in legislatures."

"Many state constitutions restrict the scope, effectiveness, and adaptability of state and local action," the Commission on Intergovernmental Relations reported in 1955. "These self-imposed constitutional limitations make it difficult for many states to perform all of the services their citizens require."

The Commission, a product of the Eisenhower administration, sought ways to strengthen state governments in order that they might assume a greater share of the governmental load.

"An oxcart law in a jet age," was the description given by then Gov. James P. Coleman, of Mississippi, in 1958, to that state's

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constitution. The governor was asking for a constitutional convention to replace the fundamental law adopted in 1890. But opponents said a new constitution, or even a rewriting of the 1890 document, would invite review by unfriendly federal courts. The opponents thought it best to make changes through the amending procedure and their view was adopted.

Antiquated and overly detailed," was the description given a few years ago to the Texas constitution, adopted in 1876. A committee, in seeking a new constitution, pointed out that a state "manacled by its constitution is in a poor position to protest when problems with which it cannot cope are taken under the wing of national agencies."

A most severe critic, Robert S. Allen, claimed in 1948 that most of the state constitutions "bear no more resemblance to a constitution than a garbage dump does to a park."

"The incorporation into their constitutions of materials that are transitory or statutory in nature is a common failing of American states," according to Drs. Hink and Mason. "A constitution is, or ought to be, a document devoted to basic principles which mark guidelines for action, fundamental rights, and general restrictions. A constitution should, to a very large extent, be timeless by nature; x x x be as fundamental one decade as the next."

Drs. Mason and Hink said one bad practice is to fix salaries in constitutions. With increases in the cost of living, this can only mean that the constitutions will be cluttered "with restrictive provisions that soon become obsolete."

The political scientists believe a constitution "should be so written as to be capable of ready understanding by lay citizens." They also believe there is "nothing wrong with a critical examination of governments and constitutions, providing the analysis is done with respect for the good parts of the old and a sincere motivation for improvement.

"A constitution," they added, "is, after all, a progenitor and result of the power structure within a society, though it may not reflect at any moment a precise image of the power system that prevails.