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## What Should A Model Constitution Contain?

Albert L. Sturm\*

I am honored by the invitation to participate in this Constitutional Revision Symposium. I am pleased not only with the opportunity to return to Morgantown, where I was a member of the faculty at West Virginia University for more than fifteen years, but also to be a participant in a program addressed to a subject of far-reaching importance to West Virginians. My initial interest in the general subject of state constitutional reform, and in revision of the 1872 Constitution of West Virginia particularly, dates from my early years on the faculty of West Virginia University. In 1950, the recently created Bureau for Government Research published my first monograph on the subject; this study was revised, updated, and expanded in 1961.<sup>1</sup> I return to West Virginia, therefore, with some feeling of gratification in having played a small part in the long and arduous process of stimulating and developing some public interest in constitutional reform in West Virginia. I am glad to be here and to participate in this Seminar.

### A "Model" Constitution

The subject on which I have been asked to speak today is "What Should a Model Constitution Contain?" Although I welcome the opportunity to discuss this topic, I approach it with some apprehension. As John Bebout wrote in his Introduction to the latest edition of the *Model State Constitution*, "Strictly speaking there can be no such thing as a 'Model State Constitution' because there is no model state."<sup>2</sup> The National Municipal League published the first edition of the *Model State Constitution* in 1921, and this document has gone through six editions, the last issued in 1963 and revised in 1968. Each edition was the product of many informed minds and resulted from extensive deliberation and consultation of distinguished practitioners and scholars in state government. Each edition of the *Model* is different and reflects new views, conditions, needs, and emphases in an ever-changing, dynamic society.

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<sup>1</sup> A. STURM, *THE NEED FOR CONSTITUTIONAL REVISION IN WEST VIRGINIA* (1950); A. STURM, *MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA* (1961).

<sup>2</sup> BEBOUT, *INTRODUCTION TO NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION* vii (6th rev. ed. 1968).

Furthermore, after almost twenty years of working and writing on state constitutional matters, I conclude that practically every careful student and practitioner in state government is at least a potential model builder and has his own ideas about the proper contents of a state constitution, or at least those with which he has a working knowledge. The fact is that the experts differ among themselves, and the longer one labors on constitutional problems the more humble he becomes and the less certain he is that his views should take precedence over those of others. Actually, few persons feel qualified to pass expert judgment on all areas of a state constitutional system. And I am sure that I might be adjudged guilty of "carpetbagging in reverse" (and probably with some justification) if I should attempt to express in "a few thousand well-chosen words" my personal preferences in state constitution-making.

All careful students of state government acknowledge that there is no such thing as an "ideal" constitution for all the states, whose organic laws should provide for differing needs and conditions. Nevertheless, from the lengthy experience of American states in making and operating constitutions some consensus has developed regarding the desirable features of these basic instruments. For example, state government scholars would agree that these words of Lincoln in an 1862 message to Congress are as applicable today as in the 1860's: "The dogmas of the quiet past are inadequate to the stormy present."

Growing discontent with antiquated and outmoded state constitutions has been strongly expressed and reiterated since midcentury. In 1955, the Commission on Intergovernment Relations appointed by President Eisenhower directed the nation's attention to the "very real and pressing need for the States to improve their constitutions."<sup>3</sup> Increasingly, public officials and decision-makers, opinion leaders, influential private organizations and other groups have forcefully asserted the need for modernizing the legal foundations of state government.<sup>4</sup>

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<sup>3</sup> COMMISSION ON INTERGOVERNMENTAL RELATIONS, A REPORT TO THE PRESIDENT FOR TRANSMITTAL TO THE CONGRESS 38 (1955).

<sup>4</sup> See, generally, NATIONAL MUNICIPAL LEAGUE publications including NATIONAL CIVIC REVIEW, MODEL STATE CONSTITUTION, STATE LEGISLATURES PROGRESS REPORTER, and STATE CONSTITUTIONAL STUDIES; COUNCIL OF STATE GOVERNMENTS, STATE GOVERNMENT; COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES; MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION (W. B. Graves ed. 1960); COMMITTEE FOR ECONOMIC DEVELOPMENT, MODERNIZING STATE GOVERNMENT (1967); CHAMBER OF COMMERCE OF THE UNITED STATES, MODERNIZING STATE GOVERNMENT (1967); T. SANFORD, STORM OVER THE STATES (1967).

The major focus of this paper is on the proper contents of a state constitution as viewed by authorities on the subject. But since this is the first presentation in this Symposium, as a preface for further discussion it appears appropriate to me to summarize the salient characteristics of present state constitutions with particular attention to the 1872 West Virginia document.

### Nature of State Constitutions<sup>5</sup>

As fundamental laws, all American state constitutions embody the basic principles of political democracy, such as popular sovereignty, and especially limited government, which is implemented through the familiar tripartite separation of powers, checks and balances, bills of rights, and by other restrictions. In addition to providing the basic structural framework of government, state constitutions express in varying detail both positive and limiting provisions for the exercise of governmental powers. They define boundaries, specify suffrage qualifications and the manner of conducting elections, and provide methods for amendment and revision. Much verbiage in these documents is accounted for by articles reflecting the complexity and diversity of functional growth—local government, finance, education, highways, corporations, welfare, agriculture, labor, and other areas of governmental activity. Unlike the makers of the Constitution of the United States, the framers of state organic laws traditionally have been much more concerned with limiting government than with enabling and vitalizing it as an effective instrument for accomplishing social objectives.

*Number.* Until the flood of new countries achieved nationhood during the last decade, American states had more collective experience in constitution-making than the rest of the world combined. As of May, 1969, American states have operated under at least 138 constitutions since the Declaration of Independence.<sup>6</sup> Louisiana leads all other states with ten constitutions; Georgia ranks second with eight; South Carolina has had seven, and Alabama and Florida have had six each.<sup>7</sup> Three states have had five constitutions; nine have

<sup>5</sup> See A. STURM, RECENT TRENDS IN STATE CONSTITUTIONAL REVISION 6-7 (1965); A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA (1961).

<sup>6</sup> Not included in this figure are Hawaii's five constitutions as a kingdom and as a republic, and the Constitution of Puerto Rico adopted in 1952.

<sup>7</sup> Except where otherwise identified, the sources of statistical data in this paper are questionnaires prepared by the writer and submitted to approximately 125 correspondents in the fifty states and Puerto Rico. Data provided in responses of the correspondents will be included in a monograph on State Constitutional Revision to be published in 1969 by the National Municipal League.

had four; four have operated under three organic laws, and nine states, including West Virginia, have had two constitutions. Twenty states have had but one basic charter. Thus, with almost two centuries of experience, the United States has been the world's principal potential laboratory for experimentation in constitution-making.

*Age.* The average age of state constitutions, as of May, 1969, is 83.4 years. Oldest is the Massachusetts document dating from 1780; the newest is the Florida Constitution, which became effective January 7, 1969. Effective since 1872, the West Virginia Constitution is ninety-seven years old, which is seventeen years older than the median of eighty for all the states. The West Virginia document is one of thirty-six state constitutions now effective that antedate 1900, and one of twenty-three adopted during the thirty-five years from the Civil War to 1900. This group of state organic laws, probably more than any other, reflects the general distrust of government characteristics of the period in which they were formulated.

*Length.* State constitutions range in length from the estimated 253,800-word Louisiana document to Vermont's estimated 5,000-word instrument. The Constitution of West Virginia, with an estimated 22,600 words, ranks twenty-first in length among the basic charters of the fifty states, as of January 1, 1969. Although only a little longer than the median of estimated lengths,<sup>8</sup> the West Virginia document is more than three times as long as the Constitution of the United States with its twenty-five amendments.<sup>9</sup>

It is noteworthy that the six state constitutions now effective that antedate 1850 are substantially shorter than the average.<sup>10</sup> Compared with the constitutions of the latter half of the nineteenth century, the six oldest documents are characterized both of greater brevity and flexibility. All new state organic laws adopted during the last twenty-five years contain fewer than 20,000 words; most of them have under 15,000.

The original constitutions of the first states were short documents and afforded the same flexibility that distinguishes the national Constitution. Addition of much detailed matter during the nineteenth century reflected the popular distrust of state lawmaking bodies resulting from legislative excesses and abuses. Other factors con-

<sup>8</sup> As of January 1, 1969, the median of estimated lengths of state constitutions was between those of Kentucky (21,500) and Utah (20,600).

<sup>9</sup> The national Constitution with twenty-five amendments contains approximately 7,250 words.

<sup>10</sup> Massachusetts (17,200), New Hampshire (12,200), Vermont (5,000), Maine (12,950), Rhode Island (16,000), and Wisconsin (11,000).

tributing to longer constitutions include: growth in state functions requiring additional governmental machinery and powers, pressure of special interests for constitutional status, public dissatisfaction with strict judicial construction of constitutional provisions, and faulty drafting. Furthermore, lengthening documents have bred even more amendatory detail. Thus, long and detailed constitutions have tended to become even longer and more detailed.

### Constitutional Amendments and Reform Efforts

The accompanying table shows comparative data on proposed amendments to all state constitutions and to the West Virginia document, adoptions, and percentage of adoptions. Part I covers the entire operative life of these documents up to January 1, 1969, and Part II provides data for the nineteen-year period January 1, 1950-January 1, 1969. Column A in both Parts I and II lists the averages for all states for all methods;<sup>11</sup> Column B provides averages on amendments proposed and adopted by the method of legislative proposal; and Column C lists the figures for West Virginia, where proposal by the legislature is the only method that has been used in altering the Constitution.<sup>12</sup>

These figures show that West Virginia has been less active in proposing and adopting constitutional amendments than the average activity for all the states, both during the entire period of effective operation of state constitutions to January 1, 1969, and in the nineteen years since midcentury. Some distortion results in computing averages because a few states propose and adopt a great many amendments; nevertheless, West Virginia clearly ranks among those states in which relatively little has been accomplished toward general constitutional reform. Also of significance are the figures showing percentage of adoptions. Again, West Virginia ranks well below the average during both periods covered in the computation. It should be noted that no reliable comprehensive data were available to

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<sup>11</sup> As of January 1, 1969, the fifty state constitutions provided three formal methods of proposing formal changes in their contents: (1) proposal by the legislature, (2) by popular initiative, and (3) by constitutional convention. The new Florida Constitution, which became effective January 7, 1969, is the first expressly to authorize the use of constitutional commissions, now the fourth formal method of changing state constitutions.

<sup>12</sup> Correspondents in the fifty states provided aggregate data on amendments. For most states, the secretary of state supplied the information. Data from a few states may not be completely accurate, but slight inaccuracies that may exist result in no substantial distortion of the total pattern of constitutional change by amendment.

**Amendments to State Constitutions in Effect January 1, 1969  
All States and West Virginia**

	<i>A</i>	<i>B</i>	<i>C</i>
	<i>Average for All States All Methods</i>	<i>Average for All States Legislative Proposal</i>	<i>West Virginia Legislative Proposal</i>
<b>I. Covering Entire Period of Effective Operation to January 1, 1969</b>			
1. Total proposals submitted to voters _____	158.4*	140.3*	71
2. Total amendments adopted	97.6	90.1	39
3. Percentage of adoptions —	61.6	64.2	54.9
<b>II. Covering the Period, January 1, 1950—January 1, 1969</b>			
1. Total proposals submitted to voters _____	70.3*	66.3*	27
2. Total amendments adopted	49.3	46.9	15
3. Percentage of adoptions —	70.1	70.7	55.5

\* These figures apply to forty-nine states. Delaware voters do not act on constitutional amendments.

permit any distinction between amendments that effect minor alterations and those that apply to many sections, and even entire articles, of the states' organic laws. Notwithstanding, they do afford a general index of reform effort and accomplishment.

Since the West Virginia Constitution was adopted, numerous attempts, both particular and general, have been made to modernize it. These efforts until recent years have been chronicled elsewhere, and time does not permit their detailed review here.<sup>13</sup> I do want to point out, however, that as early as 1903 Governor White declared: "Our constitution creaks at almost every joint."<sup>14</sup> Two years earlier Professor Richard Fast of West Virginia University voiced current dissatisfaction with the 1872 document. "It has proved a most unsatisfactory instrument of government," he wrote. "Clamor against it from the day of its submission to the present time has never ceased, and doubtless will not cease until a new instrument takes its place free from the inhibitions which this one places in the way of just

<sup>13</sup> See A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA (1961); C. DAVIS *et al*, WEST VIRGINIA STATE AND LOCAL GOVERNMENT (1963).

<sup>14</sup> J. CALLAHAN, WEST VIRGINIA HISTORY, OLD AND NEW 423 (1923).

legislation."<sup>15</sup> A number of governors have strongly advocated constitutional reform, notably Governors White, Dawson, Glasscock, and, in more recent years, Patteson, Smith, and perhaps others of whose advocacy I am not aware.

A joint committee appointed by the legislature in 1897 recommended constitutional changes, a few of which were later adopted. Some alterations resulted from the work of the constitutional commission appointed by Governor Conley in 1929; only a few recommendations of the most recent commission, appointed in 1957, have found their way into the state's organic law.<sup>16</sup> In 1965, in response to strong urging by Governor Hulett C. Smith, the legislature passed an enabling act for a constitutional convention, but this effort was thwarted by a ruling of the supreme court of appeals that the basis of convention representation was unconstitutional. Except for the Modern Budget Amendment adopted last year, since 1960 the voters of West Virginia have rejected all proposed changes other than bonding proposals. We turn now to a brief summary of the major common deficiencies of state constitutions, many of which are found in the West Virginia document.

### State Constitutional Weaknesses

Most state constitutions, like the basic charter of West Virginia, were written to provide the legal foundation of government in a far simpler society than that of today. Although most have been amended numerous times, they have failed to keep pace with the times. Common weaknesses of state government stemming from outmoded organic laws have been reiterated in studies made in numerous states preparatory to basic legal reform. In my 1961 monograph on *Major Constitutional Issues in West Virginia*, I listed the following typical weaknesses, and I find little reason to change them eight years later, except for the impact of the reapportionment revolution of the 1960's:

1. A cumbersome, unrepresentative legislature inadequately staffed to perform the lawmaking function intelligently, with excessively restricted powers, often unresponsive to public needs, especially in urban areas, and subject to manipulation by selfish interests.

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<sup>15</sup> R. FAST & H. MAXWELL, *THE HISTORY AND GOVERNMENT OF WEST VIRGINIA* 179 (1901).

<sup>16</sup> For a full report of the recommendations of this Commission, see *FIFTH REPORT OF THE WEST VIRGINIA COMMISSION ON CONSTITUTIONAL REVISION* (1963).



2. A disintegrated and enfeebled executive with power widely dispersed and responsibility divided among a large number of elective officials on all levels, and an administrative structure of great complexity featured by duplication, overlapping, inefficiency, and waste.
3. A diffused, complicated, and largely uncoordinated judiciary, often lacking in independence, with judges selected on a political basis and frequently without professional qualifications on the lower levels.
4. Rigid restrictions on local government that seriously impede home rule.
5. A long ballot listing a bewildering array of candidates and issues and rendering the task of even the most intelligent voter exceedingly difficult.
6. Provisions for amendment and revision so rigid, in some constitutions, as practically to deprive the people of the opportunity to alter their basic law, and, in others, so lax as to encourage too frequent changes.
7. Inclusion of a mass of detail in the constitution, blurring the distinction between constitutional and statutory law, and necessitating frequent amendments.

Anyone who is at all familiar with the 1872 West Virginia Constitution must acknowledge the applicability of these several categories of deficiencies to the document. Other speakers in this Symposium will discuss specific weaknesses, emphasizing those relating to the three branches, local government, and finance.<sup>17</sup> I shall not dwell further therefore on specific substantive defects in these particular areas.

Considered as a whole, state constitutional weaknesses can be classified in three broad categories: first, general documentary infirmities relating to style, form, and manner of presentation. Of these, probably the greatest defect is excessive detail. Constitutional minutiae tend to obscure the distinction between constitutional and statutory law, deprive governmental agents of necessary flexibility, reduce their responsiveness to public needs, and promote litigation,

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<sup>17</sup> For a summary of major issues in these areas, see C. DAVIS & W. ROSS, *ISSUES OF CONSTITUTIONAL REVISION IN WEST VIRGINIA* (1966).

which thrives on constitutional verbosity. The West Virginia constitution contains many examples of excessively detailed provisions that are predominately statutory in character.<sup>18</sup> Obsolete sections also clutter up much of the document—exemplified in provisions relating to hereditary emoluments (III, 19), fighting of duels (IV, 10), ineligibility of salaried railroad officials for the legislature (VI, 13), and participation in the Civil War (VIII, 20). Some provisions have been rendered obsolete and invalid because of changes in the national Constitution—*e.g.*, restriction of suffrage to males (IV, 1) and segregated public schools (XII, 8). Other documentary weaknesses include sundry inconsistencies resulting mainly from failure to reconcile additions to the document with other conflicting provisions.<sup>19</sup>

The second principal category comprises the many substantive deficiencies which are exemplified in a disintegrated, enfeebled executive with widely dispersed powers and divided responsibility, in a diffused, complicated and inadequately coordinated judiciary, and in rigid restrictions on local home rule. Comprising the third category of weaknesses are the omissions—those widely acknowledged ingredients of a modern, effective constitution, such as mandatory provision for periodic legislative reapportionment, which is seldom included in the older state constitutions. I turn now to recent substantive trends from which we can draw some conclusions about the optimum contents of a state constitution.

### Some Emerging Trends

As I have previously stated in this presentation, from the lengthy experience of American states in making and operating constitutions some consensus has developed regarding the desirable attributes of these basic instruments of government. Although no "ideal" constitution exists for all the states, and probably never will because of great geographical, demographic, social and other differences, there is general agreement on some basic common qualities. Here is a representative list.<sup>20</sup>

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<sup>18</sup> Especially in Article VI (Legislature), VIII (Judicial Department) and X (Taxation and Finance); most or all parts of Article XI (Corporations), XII (Education), and XIII (Land Titles) do not belong in a "model" constitution.

<sup>19</sup> A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA (1961).

<sup>20</sup> A. STURM, RECENT TRENDS IN STATE CONSTITUTIONAL REVISION 13-16 (1965); A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA 7-9 (1961).

1. *Consistency with the Constitution of the United States.* Under the American federal system the national Constitution, laws of the United States made in pursuance thereof, and treaties made under the authority of the United States are the supreme law of the land. All state law, both constitutional and statutory, that is contrary to valid national law, as interpreted by the United States Supreme Court, is unenforceable and invalid. Furthermore, the principle has been established that the national Constitution "looks to an indestructible Union, composed of indestructible States."<sup>21</sup>
2. *Provision of a sound basic framework of government with a proper balance among the three branches.* The familiar tripartite allocation of governmental powers to legislative, executive, and judicial departments is not required by the national Constitution, but it has become firmly established in the American system of government. An effective state constitution will make necessary provision for the establishment of each branch, creating a workable balance among the three departments that affords safeguards against usurpation. Moreover, viable constitutional language will give recognition to the impossibility of any rigid separation of powers in modern government.
3. *Extension of ample power to governmental organs to discharge their proper functions, but with appropriate controls to curb abuse of power.* Vigor and capacity for effective and responsive action have long been subordinated by state constitution-makers to the limitation of governmental powers. If the states are to recapture their viability in the federal system, they must have the necessary tools to meet the pressing problems of the latter twentieth century and to provide solutions.
4. *Inclusion of a bill of rights.* The national Constitution affords some protection to basic personal and property rights, but this is usually minimal and is insufficient to prevent encroachment by state authority on human liberties.
5. *Provision for orderly procedures for changing the constitution that strike a balance between extremes of rigidity and laxity.* Some state constitutions have gone unchanged for decades because of a rigid amending procedure; others, can be so readily altered that they contain a great volume of extraneous matter.

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<sup>21</sup> McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

6. *Inclusion in the document of fundamental matters, excluding substance of a temporary or detailed nature characteristic of statutory law.* Writing in 1819, Chief Justice Marshall gave classic expression to the principle that a constitution should be written in broad terms:

A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deducted from the nature of the objects themselves.<sup>22</sup>

More than a hundred years later, Justice Cardozo stated the matter more succinctly:

A Constitution states or ought to state not rules for the passing hour but principles for an expanding future.<sup>23</sup>

A constitution containing only fundamentals is flexible because its phraseology is necessarily general. General language is capable of interpretation that is necessary to meet changing conditions. Herein lies the strength of the national Constitution, which has kept pace with the social order mainly through interpretation and adaptation rather than formal amendment.

7. *Use of clear, direct, simple language readily intelligible to the average citizen, and arrangement of provisions in logical order; conversely, avoidance of obscure and technical phraseology, inconsistencies, obsolete provisions, and poor organization.*<sup>24</sup>

These are widely recognized by students of state government as general hallmarks of excellence in state constitution-making.

There is somewhat less agreement on the detailed substantive contents of state organic law. However, comparative analysis of provi-

<sup>22</sup> *Texas, v. White*, 74 U.S. (7 Wall.) 700, 725 (1868).

<sup>23</sup> B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 24 (1921).

<sup>24</sup> FELLMAN, *WHAT SHOULD A STATE CONSTITUTION CONTAIN?* IN *MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION* (W. B. Graves ed. 1960); P. KAUPER, *THE STATE CONSTITUTION: ITS NATURE AND PURPOSE* (1961); NATIONAL MUNICIPAL LEAGUE, *STATE CONSTITUTIONAL STUDIES PROJECT* (1960-61).

sions in the new state constitutions, the *Model State Constitution*, and the writings of specialists in the various areas of state constitutional systems indicates a substantial body of agreement. Four years ago I attempted to synthesize the common ideas expressed in these various sources to develop a rough composite of substantive characteristics of the modern emerging state constitution. Admittedly inexact, nevertheless it is a convenient device for summarizing recent trends in both theory and practice.<sup>25</sup> Here are some of the salient features of the major constitutional areas:

*Bill of Rights:* A set of guarantees of personal and political freedom, including both traditional substantive and procedural rights and those that have recently emerged (such as "equal treatment" or "antidiscrimination" guarantees, protection of persons in the course of legislative investigations and administrative proceedings, etc.).

*Suffrage and Elections:* Provisions for broad participation in the electoral process with minimum restriction on voter qualifications, especially regarding residence requirements for participation in presidential elections; state elections in the odd-numbered years, to avoid overlapping with national elections and issues; omission of organizational and procedural details for conducting elections, which would be determined by the legislature.

*The Legislative Branch:* A continuous body (preferably unicameral), meeting annually as provided by law, with membership based solely on population, elected in single-member districts for two-year terms (if unicameral); automatic reapportionment after each decennial census by a nonlegislative agent; flexibility in legislative organization and procedure with provision for adequate staffing; minimum restrictions on legislative power; legislative post audit.

*The Executive:* Integration of executive power in a governor elected for a four-year term and eligible for re-election (alternative: election of the governor and lieutenant governor as a team on the same ticket); extensive executive and administrative powers, including power to initiate administrative reorganization subject to legislative disallowance, the item veto and with ample time to consider legislative bills; limitation of the number of administrative departments to a maximum of 20 into which agencies would be integrated

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<sup>25</sup> A. STURM, RECENT TRENDS IN STATE CONSTITUTIONAL REVISION 14-15 (1965); see the constitutions of Alaska, Hawaii, Michigan and Puerto Rico; NATIONAL MUNICIPAL LEAGUE, SALIENT ISSUES OF CONSTITUTIONAL REVISION (J. P. Wheeler ed. 1961).

on the basis of major purpose; clear provision for succession to the governorship and reasonable procedure for determining disability; general provision for a merit system.

*The Judiciary:* A unified judicial system with general provision for two or three levels of courts and legislative power to create additional courts as needed; selection of judges by gubernatorial appointment (Missouri—ABA Plan) to serve during good behavior, but with definite provision for removal; administrative direction of the courts by the chief justice; prescription of civil and criminal jurisdiction by the legislature; vestment in the supreme court of extensive rule-making power covering practice, procedure, and judicial administration.

*Finance:* An executive budget; public expenditures only in accordance with appropriations; minimum limitations on legislative power to tax, borrow, and spend; contraction of state debt only for projects or objects authorized by law; general flexibility in financial administration.

*Local Government and Intergovernmental Relations:* Home rule for cities and counties with provision for optional charter systems; express authorization for the interchange of powers and functions among local governmental units; broad express authorization for cooperative relationships, consolidation, and sharing and transfer of functions among units of government.

*Other State Functions:* General rather than detailed substantive provisions on governmental functions, such as education, conservation, corporations, etc.; statement of a liberal rule of judicial construction to guard against judicial findings of implied limitations.

*Constitutional Change:* Provision for constitutional amendment and revision that permits the people, as well as the legislature, to initiate changes; express authorization for legislative proposal of amendments and constitutional conventions (and, optionally, the constitutional initiative); automatic periodic referendum on the question of calling a constitutional convention; mandatory submission of all proposed constitutional changes to the electorate.

### **The Complete Constitution**

This modern composite of substantive provisions has evolved from long experience in state constitution-making. In summary, it guarantees both the traditional and recently emerged personal and prop-

erty rights widely acknowledged to be of sufficient fundamental importance to merit recognition in the basic law; it extends the elective franchise on a wide base to all citizens capable of participating in political processes; it provides for truly representative organs of government fully empowered and competently staffed to perform the functions of making, executing, and interpreting public policy without crippling limitations; it extends to political subdivisions full powers of local self-government consistent with statewide interests, and authority to enter into all cooperative arrangements necessary to solve common problems in a complex social order; it affords a sound basis for development and use of personnel, financial, and other resources essential for the performance of government functions; and it provides procedures for constitutional change that insure optimum stability and flexibility.

On the whole, this composite offers a positive instrument for action and responsiveness to public needs. It eschews traditional limitations that prompted Henry Jones Ford as early as 1908 to refer to the "manacled state that puts a straitjacket and handcuffs upon government."<sup>26</sup> It represents a sharp reversal from the historic pattern of constitution-making—away from detail and toward simplification and flexibility, yet maintaining responsibility along with responsiveness. In short, it faces squarely the demands, complexities, and problems of our time and looks forward to the needs of future decades and generations.

### Politics and Models

A final word of caution, however, is in order. I remind you that the process of amending, revising, and writing a state constitution is involved inescapably in politics. Politics implies competition among interest groups and individuals for power to determine public policy and to control its execution. Since a state constitution is the legal foundation upon which the state's political structure rests, interest groups, both within and outside government, are vitally concerned with the contents of the document that affect them directly. Although constitution-making is lawmaking on the highest level, it is a very practical process that is necessarily molded by tradition and political forces and experience.

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<sup>26</sup> THE INFLUENCE OF STATE POLITICS IN EXPANDING FEDERAL POWER, IN V PROCEEDINGS OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION 53-63 (1909).

Recent experience, especially in Maryland, indicates that purists seldom win complete acceptance of their models. Compromise is an essential attribute of democratic decision-making, including revision of state organic laws. Other than the education afforded in the process, writing an "ideal" constitution is of little lasting value if the document is rejected by the electorate.

Notwithstanding these facts of political life, sustained effort should be exerted to achieve the fundamentals of a modern, viable instrument of government. This requires vigorous leadership and extensive education of the electorate. Let's be realistic—constitutional revision is an esoteric subject. Few voters know much about it. Even though constitutions are important documents—living instruments—they do not provide very lively reading. Citizen apathy is one of the major obstacles to be overcome. Most voters display little interest in what seems to them to be abstract principles that do not deal immediately with particular people and personal bread-and-butter issues.

Political leaders have a responsibility to lead as well as to follow their constituents. As candidate John F. Kennedy said in 1960,

It is not enough merely to represent prevailing sentiment—to follow McKinley's practice, as described by Joe Cannon, of 'keeping his ear so close to the ground he got it full of grasshoppers.'<sup>27</sup>

Few if any tasks in governmental reform are more difficult than modernizing an existing constitutional system. But an increasing number of states are now involved in the process of renewing the vitality of their governments. The need for action in West Virginia is apparent and the hour is late. I wish you well as you proceed with this important work in the Mountain State.

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<sup>27</sup> Campaign Speech on the Presidency delivered to the National Press Club, January 14, 1960. Quoted in *THE POWER OF THE PRESIDENCY: CONCEPTS AND CONTROVERSY* 133 (R. S. Hirschfield ed. 1968).