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State of bills of rights 1776-1837

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STATE BILLS OF RIGHTS: 1776-1837

**A Thesis
Presented to
the Faculty of the Department of Political Science
University of Richmond**

**In Partial Fulfillment
of the Requirements for the Degree
Master of Arts**

**by
Nancy Louise Roberts**

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Preface

The author has relied chiefly on one source in the writing of this thesis, Francis Newton Thorpe's collection of federal and state documents. There are other works which deal with the subject of State Bills of Rights; these have been included in the bibliography. These additional works may be of interest to readers who desire a more general treatment of the subject.

The purpose of this particular work is to study the State Bills of Rights and to discover what political philosophy they express. To the knowledge of the author, this has never been attempted, therefore secondary sources were of value to her only as background material.

Chapter I

Introduction

A comparative view of State Bills of Rights is a fascinating study, for these documents denote the political, social, and economic theories prevalent in the States at the time they were written. One finds a diversity of opinion characteristic of American individualism and freedom of thought, but one also discovers a consensus of opinion among all States on fundamentals. This consensus was to unite the States and to enable them to operate effectively for several centuries, without changing the national document by which they were governed.

To explore this point, the author has chosen to study those States ^{which} were writing Bills of Rights during the period of our early Constitutional development, namely those who were admitted to the Union from 1776 to 1837. The theories expressed during this period became the fundamental and enduring political philosophy of the American people.

Before examining the content of the documents, we must establish the dates of written constitutions within each State. Virginia's Convention adopted its first Constitution with a Bill of Rights on June 29, 1776. A second Constitution was ratified by the people of Virginia on January 14, 1830, but no change was made in the Bill of Rights. A Convention in New Jersey adopted its Constitution on July 2, 1776. This document did not contain a Bill of Rights, and it was not until 1844 that New Jersey's people ratified a Constitution with a Bill. Delaware's first Constitution of August 27, 1776, did not have a Bill of Rights either.

A Convention did adopt one with the Constitution of June, 1792, however. Delaware approved a third Constitution by Convention on November 8, 1831, but no changes were made in the Bill of Rights.

Pennsylvania's first and second Constitutions contained Bills of Rights ratified by Convention on September 28, 1776, and September 2, 1790. A third Constitution was submitted to the people and approved by them on February 22, 1838. Some changes were made with her 1790 Bill of Rights; but in 1838, the Bill remained as it had been written in 1790.

Maryland's first Bill of Rights was adopted in a Constitutional Convention on November 11, 1776. This served her until 1851. North Carolina's was approved in the same manner on December 18, 1776.

New York adopted its first Constitution by Convention on April 20, 1777. This document was prefaced by a Preamble which was similar to some of the other Bills of Rights, but New York did not have an actual Bill until 1821, when her people ratified a new Constitution.

Vermont wrote Constitutions in 1777, 1786, and 1793; each time the Bill of Rights remained the same. She was finally admitted to statehood in 1791.

Massachusetts' Constitution of 1780 was the first to be ratified by the people. Her Bill of Rights is very lengthy for this reason.

Connecticut used her colonial charter as a Constitution until October 5, 1818, when her people ratified a Constitution with a Bill of Rights.

Rhode Island continued to use her charter throughout the period, and neither Georgia nor South Carolina included Bills of Rights in their Constitutions before 1840.

New Hampshire's delegates wrote a Bill of Rights which was added to their 1784 Constitution, ratified by the people, and carried over to the

1792 Constitution. Kentucky was admitted as a state on February 4, 1791, and her Constitution and Bill of Rights were adopted on April 19, 1792, by Convention. Tennessee was admitted on June 1, 1796; her Convention had ratified a Bill of Rights on February 6, 1796. A second Constitution and Bill was adopted by the people of Kentucky on March 6, 1835. Ohio, admitted in 1803, had ratified a Bill of Rights by Convention on November 1, 1802.

Louisiana was admitted to statehood on April 8, 1812; her Constitution of 1812 contained no Bill of Rights. Indiana's 1816 Constitution and Bill were ratified by Convention six months before she was admitted to statehood. Mississippi's Constitutions of 1817 and 1832 contained Bills of Rights and were ratified by the people.

Illinois was admitted on December 3, 1818, and a Convention approved the Bill of Rights on August 26, 1818. Alabama's Constitution of 1819 was ratified by the people four months before she was admitted to the Union. Maine's people ratified her Bill of Rights on December 6 of that same year, and Maine was admitted to statehood in 1819.

The Convention in Missouri adopted a Bill of Rights on July 19, 1820. Arkansas' Convention also included a "Bill" in the Constitution of 1836. Last of this group to adopt a Bill of Rights was Michigan, whose people ratified it on November 2, 1835.

Besides the dates of acceptance, the form or location of the Bill of Rights within the constitution is interesting. The very first constitutions placed their Bills in the beginning, as a type of preamble to the body of the constitution. The states ^{which} did this were: Maryland, Pennsylvania, North Carolina, Virginia, Vermont, and Massachusetts.

The next common position was at the very end of the Constitution.

States ^{which} ~~who~~ followed this procedure from 1792 to 1821 were: Kentucky, Tennessee, Ohio, Illinois, Missouri, and New York.

The more common location became the first article. Those states who placed their Bills of Rights in Article I were: New Hampshire, Delaware, Indiana, Mississippi, Connecticut, Alabama, Maine, Michigan, and Arkansas.

The above survey is intended to give the reader a clearer idea of the chronological development of state constitutions. Before beginning a discussion of the content of the Bills of Rights, a historical scope had to be presented.

Note: The information in this survey is based on the work of Francis Newton Thorpe, ed., House Documents, v. 91, part 3, The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America, (Washington, D. C., Government Printing Office, 1909) volumes 1-7. Hereafter referred to as F. N. Thorpe, ed., House Documents, v. 91, part 3 State Constitutions.

Chapter II

General Philosophy

By the time of the revolution, a general philosophy of government had developed in the minds of the colonists. There were many contributing factors to this philosophy, among these were the grievances against colonial rule, the European philosophers of the Enlightenment, the reasons for colonization, and the type of life the colonists were forced to live in the wilderness of America. This idea of the sources of American democratic philosophy could be greatly expanded. Indeed, it could be the seed of another thesis topic. However, the point to note in this paper is that there was a general consensus of opinion among the colonies about certain basic tenets of government.

These fundamental beliefs were that sovereignty resides in the people, that they enjoy certain natural rights, that by forming a government they enter into a social compact which places certain restrictions upon them for the good of all, and that all men are equal and therefore hereditary privileges are to be avoided. From these general beliefs stemmed more specific ideas of limited government, separation of powers, and the right of representation.

The idea of popular sovereignty is the basis of all other rights contained in the Bills of Rights, and is the very reason that they were even written or included in the states' outline of government. Every state began or prefaced its Bill of Rights with the statement that sovereignty resides in the people, and therefore government is instituted for the good of all, not for the benefit of any one man or group. This is the only clause common to all states, even those ^{which} did not include some of the other common provisions. To list the states that included the philosophy

of popular sovereignty would be to reiterate a roster of the first Bill of Rights of each state.

Three rights are very evidently direct expansions of this idea. These are: since sovereignty resides ultimately in the hands of the people, they have the right to alter or abolish the government and to establish one which is more conducive to the public good; since the people are sovereign, they can never be bound by any law to which their representatives have not given consent; and representatives are at all times accountable to the people for their actions.

All states except North Carolina, New York, Delaware and Illinois supplemented their theory of popular sovereignty with the philosophy which justified revolution and the right to alter government to form one which will work for the good of all. Virginia¹, Pennsylvania², and Maryland³ provided this justification of revolution in 1776, Vermont in 1777⁴, Massachusetts in 1780⁵, New Hampshire in 1784⁶, Pennsylvania in 1790⁷, Kentucky in 1792⁸, Tennessee in 1796⁹, Ohio in 1802¹⁰, Indiana in 1816¹¹, Mississippi in 1817¹², Connecticut in 1818¹³, Maine¹⁴ and

¹F. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 7, p. 3875.

²Ibid., v. 5, p. 3082.

³Ibid., v. 3, p. 1687.

⁴Ibid., v. 6, p. 3740.

⁵Ibid., v. 3, p. 1890.

⁶Ibid., v. 4, p. 2455

⁷Ibid., v. 5, p. 3100.

⁸Ibid., v. 3, p. 1274.

⁹Ibid., v. 6, p. 3422.

¹⁰Ibid., v. 5, p. 2909.

¹¹Ibid., v. 2, p. 1058.

¹²Ibid., v. 4, p. 2033.

¹³Ibid., v. 1, p. 537.

¹⁴Ibid., v. 3, p. 1646.

Alabama¹⁵ in 1819, Missouri in 1820¹⁶, Michigan in 1835¹⁷, and Arkansas in 1836.¹⁸

All states except Tennessee, Illinois, Connecticut, Missouri, Arkansas and Michigan promised that inhabitants would never be subject to any laws except those made by their duly elected legislators. Since sovereignty belongs with the people, they have the right to choose those people who will make the laws under which they will live. The states which guaranteed this right were: North Carolina¹⁹, Maryland²⁰, and Virginia²¹ in 1776, New York in 1777²², Vermont in 1777²³, Massachusetts in 1780²⁴, New Hampshire in 1784²⁵, Pennsylvania in 1790,²⁶ Delaware in 1792²⁷, Kentucky in 1792²⁸, Ohio in 1802²⁹, Indiana in 1816³⁰, Mississippi in 1817³¹, and Alabama³² and Maine³³ in 1819.

Several of the early states and Maine evidenced one of the revolutionary grievances by stating that there would be no taxation without representation. The fact that the British had placed heavy taxes on the colonists without allowing them to be represented was a

¹⁵ Ibid., v. 1, p. 96.

¹⁶ Ibid., v. 4, p. 2163.

¹⁷ Ibid., v. 4, p. 1930.

¹⁸ Ibid., v. 1, p. 269.

¹⁹ Ibid., v. 5, p. 2787.

²⁰ Ibid., v. 3, p. 1687.

²¹ Ibid., v. 7, p. 3813.

²² Ibid., v. 5, p. 2628.

²³ Ibid., v. 6, p. 3741.

²⁴ Ibid., v. 3, p. 1892.

²⁵ Ibid., v. 4, p. 2457.

²⁶ Ibid., v. 5, p. 3101.

²⁷ Ibid., v. 1, p. 569.

²⁸ Ibid., v. 3, p. 1275.

²⁹ Ibid., v. 5, p. 2910.

³⁰ Ibid., v. 2, p. 1058.

³¹ Ibid., v. 4, p. 2034.

³² Ibid., v. 1, p. 97.

³³ Ibid., v. 3, p. 1648.

great agitator toward revolution. Therefore, the first state Bills of Rights included a special clause guarding against this evil. The states were Virginia³⁴, Pennsylvania³⁵, Maryland³⁶, and North Carolina³⁷ in 1776, Massachusetts in 1780³⁸, New Hampshire in 1784³⁹, and Maine in 1819⁴⁰. The guarantee was not really necessary, because it was implied in the provision that the legislature would be the only law-making body. However, one can easily see why these states were so careful to provide against what had been so intolerable.

The third direct extension of the idea of popular sovereignty was also made only by the early states. Maryland⁴¹, Pennsylvania⁴², Virginia⁴³, North Carolina⁴⁴, Vermont⁴⁵, Massachusetts⁴⁶, New Hampshire^{47^a}, and Illinois^{47^b} reinforced the philosophy by stating that public magistrates are at all times accountable to the people and the people have a right to require justice, moderation, industry and frugality of them.

The theory of natural rights was given written enforcement by some states. This theory is that all men are born equal and therefore are entitled to life, liberty, property, and the pursuit of happiness. They were called natural rights because no equivalent

³⁴ Ibid., v. 7, p. 3813.

³⁵ Ibid., v. 5, p. 3083.

³⁶ Ibid., v. 3, p. 1687.

³⁷ Ibid., v. 5, p. 2788.

³⁸ Ibid., v. 3, p. 1892.

³⁹ Ibid., v. 4, p. 2457.

⁴⁰ Ibid., v. 3, p. 1648.

⁴¹ Ibid., v. 3, p. 1687.

⁴² Ibid., v. 5, p. 3081.

⁴³ Ibid., v. 7, p. 3814.

⁴⁴ Ibid., v. 5, p. 2788.

⁴⁵ Ibid., v. 6, p. 3741.

⁴⁶ Ibid., v. 3, p. 1892.

^{47^a} Ibid., v. 4, p. 2457.

^{47^b} Ibid., v. 2, p. 983.

could be given for them. Pennsylvania⁴⁸ and Virginia⁴⁹ professed a belief in this philosophy in 1776, Vermont in 1777⁵⁰, Massachusetts in 1780⁵¹, New Hampshire in 1784⁵², Ohio in 1802⁵³, Indiana in 1816⁵⁴, Illinois in 1818⁵⁵, and Maine in 1819⁵⁶.

A further guarantee that all men are created equal was the statement that no man may have exclusive or hereditary privileges or titles of nobility. Every state except New Hampshire and Illinois assured their inhabitants that this unequal practice would not be allowed. Several of these states justified equality of rights by the social compact theory. They felt that, since men entered into a society and surrendered some of their freedom in doing so, they entered the society on an equal basis. The states which gave credence to this theory were Kentucky in 1792⁵⁷, Mississippi in 1817⁵⁸, Connecticut in 1818⁵⁹, Alabama in 1819⁶⁰ and Arkansas in 1836⁶¹.

New Hampshire mentioned the social compact theory in her 1784 Bill of Rights, but she did not justify equality of rights by it. Instead, she states:

"When men enter into a state of society, they
surrender up some of their natural rights to

⁴⁸ Ibid., v. 5, p. 3081.

⁴⁹ Ibid., v. 7, p. 3813.

⁵⁰ Ibid., v. 6, p. 3739.

⁵¹ Ibid., v. 3, p. 1889.

⁵² Ibid., v. 4, p. 2453.

⁵³ Ibid., v. 5, p. 2909.

⁵⁴ Ibid., v. 2, p. 1057.

⁵⁵ Ibid., v. 2, p. 981.

⁵⁶ Ibid., v. 3, p. 1646.

⁵⁷ Ibid., v. 3, p. 1274.

⁵⁸ Ibid., v. 4, p. 2033.

⁵⁹ Ibid., v. 1, p. 537.

⁶⁰ Ibid., v. 1, p. 96.

⁶¹ Ibid., v. 1, p. 269.

that society, in order to insure the protection of others; and without such an equivalent, the surrender is void.⁶²

The very early states, North Carolina⁶³, Maryland⁶⁴, Virginia⁶⁵, New York⁶⁶, Massachusetts⁶⁷, and New Hampshire⁶⁸, included the philosophy or belief in separation of powers. This was a statement that the legislative, executive, and judicial branches of government should function separately. This idea is basic to the American democracy, and the later states did not exclude it. They just transferred the provision to another section of the constitution. Actually, this is more reasonable, because separation of powers is not a "right" of the people but is a part of the framework of government.

The philosophy presented in this chapter had become the basic theory of government among all the colonies. It is amazing that this was true because the colonies stretched over a huge expanse of land, and travel from one to the other was difficult. This, naturally, slowed down the flow of ideas. The colonies were also faced with different problems and social conditions. That a clear philosophy should have emerged as a basis for government from this variegated group is extremely noteworthy.

⁶² Ibid., v. 4, p. 2453.

⁶³ Ibid., v. 5, p. 2787.

⁶⁴ Ibid., v. 3, p. 1687.

⁶⁵ Ibid., v. 7, p. 3813.

⁶⁶ Ibid., v. 5, p. 2628.

⁶⁷ Ibid., v. 3, p. 1893.

⁶⁸ Ibid., v. 4, p. 2457.

Chapter III
Fundamental Guarantees

The rights to petition, and to assemble, and the freedoms of speech, press, and religion are considered to be fundamental guarantees, primarily because they appear in the first amendment to the National Constitution. I have included also the freedom from unreasonable searches and seizures and provisions pertaining to warrants in the chapter. This particular right is found in the fourth amendment to our National Constitution, but it is so fundamental in nature that it would be wrong to refer to it under any other general heading.

The right to assemble and to petition is found in several of the very early state constitutions. North Carolina¹ and Pennsylvania² were the first to guarantee the right in their Constitutions of 1776. Vermont³ was the next state to include this right in its Constitution of 1776. The people of Massachusetts, in 1780⁴, ratified a Constitution containing the clause. Maryland was one of the first states also, but her Constitution of 1776⁵ guaranteed only the right to petition the legislature. Virginia had a Constitution with a Bill of Rights at this time, but she did not include the right to petition

¹F. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 5, p. 2788.

²Ibid., v. 5, p. 3083.

³Ibid., v. 6, p. 3741.

⁴Ibid., v. 3, p. 1892.

⁵Ibid., v. 3, p. 1687.

and to assemble⁶. Virginia did not write it into her State Constitution before 1860. Her people probably felt that the national provision was adequate.

New Hampshire's first Constitution of 1784⁷, Kentucky's of 1792⁸, and Tennessee's of 1796⁹, included a provision for the right. Delaware, like Maryland, guaranteed only the right to petition in her Constitution of 1792¹⁰. Vermont, admitted to statehood in 1791, did not include the provision.

All of the states which adopted constitutions between 1800 and 1840 guaranteed the right to petition and to assembly except New York. These states were: Ohio in 1802¹¹, Indiana in 1816¹², Mississippi in 1817¹³, Illinois¹⁴ and Connecticut¹⁵ in 1818, Maine¹⁶ and Alabama¹⁷ in 1819, Missouri in 1820¹⁸, Michigan in 1835¹⁹, and Arkansas in 1836²⁰.

Freedom of speech and of the press were very important early guarantees. However, the earliest Bills of Rights provided only for freedom of the press. Virginia²¹, Maryland²², and North Carolina²³

⁶ Ibid., v. 5, p. 2654.

⁷ Ibid., v. 4, p. 2457.

⁸ Ibid., v. 3, p. 1275.

⁹ Ibid., v. 6, p. 3423.

¹⁰ Ibid., v. 1, p. 570.

¹¹ Ibid., v. 5, p. 2911.

¹² Ibid., v. 2, p. 1059.

¹³ Ibid., v. 4, p. 2034.

¹⁴ Ibid., v. 2, p. 983.

¹⁵ Ibid., v. 1, p. 538.

¹⁶ Ibid., v. 3, p. 1648.

¹⁷ Ibid., v. 1, p. 98.

¹⁸ Ibid., v. 4, p. 2163.

¹⁹ Ibid., v. 4, p. 1932.

²⁰ Ibid., v. 5, p. 2600.

²¹ Ibid., v. 7, p. 3814.

²² Ibid., v. 3, p. 1690.

²³ Ibid., v. 5, p. 2788.

in 1776, Massachusetts in 1780²⁴, New Hampshire in 1784²⁵, and Delaware in 1792²⁶ were those states which did not guarantee freedom of speech.

Pennsylvania was the first state to include freedom of speech in her fundamental rights. The 1776 Constitution assured both freedom of speech and of the press.²⁷ Vermont followed in 1777²⁸ with the same provisions, and in 1786 she added the clause that "freedom of speech is so inherent in the rights of the people that it cannot be the foundation for accusations or complaints in any court."²⁹

All of the states adopting new Bills of Rights between 1790 and 1840 assured both freedoms to their citizens. They also added a clarification of the meaning of freedom of speech:

"In all prosecutions...for libel, the truth may be given in evidence to the jury; and it shall appear to the jury that the matter charged as libelous is true, and was published with good motives... the party shall be acquitted."³⁰

Pennsylvania was the first to add this provision in 1790³¹. States admitted subsequently followed Pennsylvania's example: Kentucky in 1792³², Tennessee in 1796³³, Ohio in 1802³⁴, Indiana in 1816³⁵,

²⁴ Ibid., v. 3, p. 1892.

²⁵ Ibid., v. 4, p. 2456.

²⁶ Ibid., v. 1, p. 569.

²⁷ Ibid., v. 5, p. 3083.

²⁸ Ibid., v. 6, p. 3741.

²⁹ Ibid., v. 6, p. 3753.

³⁰ Ibid., v. 5, p. 3100.

³¹ Ibid.

³² Ibid., v. 3, p. 1274.

³³ Ibid., v. 6, p. 3423.

³⁴ Ibid., v. 5, p. 2910.

³⁵ Ibid., v. 2, p. 1058.

Mississippi in 1817³⁶, Illinois in 1818³⁷, Maine³⁸ and Alabama³⁹ in 1819, Missouri in 1820⁴⁰, New York in 1821⁴¹, Michigan in 1835⁴², and Arkansas in 1836⁴³. Connecticut's first Constitution, adopted in 1818, contained the clause along with a guarantee of freedom of speech and the press.⁴⁴

New York was the only one of the older states to add a clarification regarding libel to her Bill of Rights.⁴⁵ She had never guaranteed either freedom of speech or the press prior to 1821, so when she added the clause to her Bill of Rights, it was in a form consistent with the states writing Bills of Rights for the first time.

Freedom of religion is a fundamental right of the American people, but provisions guaranteeing it took many forms in the early years. North Carolina in 1776 simply promised freedom of religion to her inhabitants.⁴⁶ Maryland also provided for freedom of religion in 1776, but her Constitution makers added the clause that no other test would be required for office-holding except an oath of fidelity to the state.⁴⁷ This clause was to be used widely in later years. Maryland also promised that Quakers should not be required to take oaths, but could substitute an affirmation of their intentions.⁴⁸

³⁶ Ibid., v. 4, p. 2033.

³⁷ Ibid., v. 2, p. 983.

³⁸ Ibid., v. 3, p. 1647.

³⁹ Ibid., v. 1, p. 97.

⁴⁰ Ibid., v. 4, p. 2164.

⁴¹ Ibid., v. 5, p. 2648.

⁴² Ibid., v. 4, p. 1931.

⁴³ Ibid., v. 1, p. 269.

⁴⁴ Ibid., v. 1, p. 537.

⁴⁵ Ibid., v. 5, p. 2648.

⁴⁶ Ibid., v. 5, p. 2788.

⁴⁷ Ibid., v. 3, p. 1689.

⁴⁸ Ibid., v. 3, p. 1690.

Pennsylvania guaranteed freedom of religion in 1776, and also the right of conscientious objectors to refuse to bear arms.⁴⁹ Virginia promised freedom of religion in 1776; however her Constitution stated "...it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other."⁵⁰

Vermont in 1777 provided that there would be no compulsion to attend religious services or to support a religious institution through taxes.⁵¹ This provision was to become very important and very widely held later. Vermont's Constitution also stated that conscientious objectors could pay an equivalent sum in lieu of military service.⁵²

Massachusetts in 1780⁵³ and New Hampshire in 1784⁵⁴ included an unusual provision regarding freedom of religion. They both stated that the legislature could require towns to make provision for Protestant religious instructors, provided that towns were allowed to elect their own instructors, and that no one was required to support an instructor of another sect than his own. New Hampshire added that those who were conscientiously scrupulous should not be compelled to bear arms.⁵⁵

In 1790, beginning with Pennsylvania's new Constitution⁵⁶, the states began to copy Maryland's earlier provision that there be no

⁴⁹ Ibid., v. 5, p. 3083.

⁵⁰ Ibid., v. 7, p. 3814.

⁵¹ Ibid., v. 6, p. 3740.

⁵² Ibid.

⁵³ Ibid., v. 3, p. 1890.

⁵⁴ Ibid., v. 4, p. 2454.

⁵⁵ Ibid., v. 4, p. 2455.

⁵⁶ Ibid., v. 5, p. 3100.

religious test for office. Delaware's first Constitution of 1792 added this guarantee along with the right to freedom of religion and worship.⁵⁷ Kentucky stated the clause regarding tests for office in broader terms in 1792. Her Constitution promised that civil rights should not be diminished because of religion.⁵⁸

Ohio deviated slightly from the general trend with her 1802 Constitution. Here the citizens were guaranteed freedom of religion but "the schools and the means of instruction [would] forever be encouraged by legislative provision not inconsistent with the rights of conscience."⁵⁹ Ohio was modifying the thoughts contained in the Massachusetts and New Hampshire Constitutions.

Tennessee in 1796 followed the pattern begun by Pennsylvania in 1790 by stating that there should be no religious test for office.⁶⁰ Tennessee also copied a right begun in Vermont in 1777, that there would be no general taxation to support a religious sect.⁶¹ Indiana made the same provisions in her 1816 Constitution⁶², as did Illinois in 1818.⁶³

Mississippi in 1817 provided that there would be no political advantages or disadvantages because of religious beliefs.⁶⁴ She also guaranteed freedom of religion as consistent with the laws and peace of the state.⁶⁵ She was following Kentucky's example of 1792.

⁵⁷ Ibid., v. 1, p. 568.

⁵⁸ Ibid., v. 3, p. 1274.

⁵⁹ Ibid., v. 5, p. 2910.

⁶⁰ Ibid., v. 6, p. 3422.

⁶¹ Ibid.,

⁶² Ibid., v. 2, p. 1058.

⁶³ Ibid., v. 2, p. 981.

⁶⁴ Ibid., v. 4, p. 2033.

⁶⁵ Ibid.

Connecticut's first Constitution of 1818 was not as "progressive" in ideas as those constitutions of the newer states. She guaranteed freedom of religion as consistent with the laws of the state, and promised that no preference would be given by law to any sect.⁶⁶ This provision was similar to that of the very early Constitutions.

Maine again followed the trend begun by Maryland that there be no religious test for office. Maine's 1819 Constitution provided further that freedom of religion meant that there should be no subjugation of one sect to another by law.⁶⁷ Alabama was also writing a Bill of Rights in 1819. She felt that freedom of religion included both of the provisions that Maine had used, but Alabama added several others. She followed Vermont and Maine by stating that there could be no requirement to pay taxes for the support of any minister or place of worship. Alabama further clarified the meaning of freedom of religion through the clause which promised that no person would be restrained in religious practice provided he did not disturb others. At the end of her guarantees regarding religious freedom, she emphasized this right by providing that civil rights may not be diminished or enlarged on account of religious principles.⁶⁹

By 1820 when Missouri wrote her Bill of Rights, it had become customary to define freedom of religion in very exact terms. Missouri's Constitution therefore stated that no one should be compelled to erect or attend a place of worship, that no one would be restrained in his

⁶⁶ Ibid., v. 1, p. 537.

⁶⁷ Ibid., v. 3, p. 1647.

⁶⁸ Ibid., v. 1, p. 97.

⁶⁹ Ibid.

religious sentiments if he did not disturb others in their religious worship, and that there would be no preference given to any religious sect by law. Missouri also provided a special right of conscientious objectors and ordained ministers to forego military service if they paid an equivalent sum.⁷⁰

New York guaranteed freedom of religion in her first detailed Bill of Rights of 1821. This document stated that conscientious objectors could be excused from military service by paying a fee.⁷¹

A unique provision is found in New York's Bill of Rights: this is that no minister may hold any public office since he is dedicated solely to the service of God.⁷²

Along with the promise that civil rights can not be enlarged or diminished because of religious beliefs, that taxes are not required for the support of ministers or teachers of religion, and the right to worship according to one's own dictates, Michigan prohibited the legislature from drawing money from the public treasury for religious groups.⁷³

Arkansas in 1836 included those guarantees which had become prevalent. These were that there could be no compulsory tax for the support of any religious group, and that civil rights should always remain equal, regardless of an individual's religion.⁷⁴

The meaning of freedom of religion was long in developing. In the early years, states had many differing ideas on what it should include. Later, certain definitions were widely used. But even after

⁷⁰ Ibid., v. 4, p. 2164.

⁷¹ Ibid., v. 5, p. 2648.

⁷² Ibid.

⁷³ Ibid., v. 4, p. 1931.

⁷⁴ Ibid., v. 1, p. 269.

1820, states maintained individual approaches to certain aspects of its meaning. New York and Michigan are the prime examples of states with unique clauses pertaining to freedom of religion.

Freedom from searches and seizures without warrants backed by oath or affirmation was a fundamental guarantee on which all states were in agreement, however. There were no differences of opinion as to the meaning of this right. The colonists had suffered too severely from searches by the British to be vague in their interpretation. Every Bill of Rights written between 1776 and 1836 guaranteed in very clear terms that citizens would forever be free from such an unjust practice.

Chapter IV

Provisions Pertaining to Military Matters

Military provisions were very important in all State Bills of Rights. Revolutionary grievances are more evident here than in any other type of provision, for all states feared strong military power. Every state writing a Bill of Rights from 1776 to 1820 forbade standing armies without the consent of the legislature, and stated that military power would always be subordinate to civil power. These states were: North Carolina¹, Maryland², Pennsylvania³, and Virginia⁴ in 1776, Vermont in 1777⁵, Massachusetts in 1780⁶, New Hampshire in 1784⁷, Pennsylvania in 1790⁸, Delaware in 1792⁹, Kentucky in 1792¹⁰, Tennessee in 1796¹¹, Indiana in 1816¹², Mississippi in 1817¹³, Connecticut in 1818¹⁴, and Alabama¹⁵ and Maine¹⁶ in 1819. After 1820, Constitution-makers felt that a statement that military power was always subordinate to civil power was adequate. However, this was one of the most widely held provisions of any found in State Bills

¹ P. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 5, p. 2788.

² Ibid., v. 3, 1688.

³ Ibid., v. 5, p. 3083.

⁴ Ibid., v. 7, p. 3814.

⁵ Ibid., v. 6, p. 3741.

⁶ Ibid., v. 3, p. 1892.

⁷ Ibid., v. 4, p. 2456.

⁸ Ibid., v. 5, p. 3101.

⁹ Ibid., v. 1, p. 570.

¹⁰ Ibid., v. 3, p. 1275.

¹¹ Ibid., v. 6, p. 3424.

¹² Ibid., v. 2, p. 1059.

¹³ Ibid., v. 4, p. 2034.

¹⁴ Ibid., v. 1, p. 538.

¹⁵ Ibid., v. 1, p. 98.

¹⁶ Ibid., v. 3, p. 1648.

of Rights, and it was also the most vehemently stated. The colonists hated British military rule, and the fear of a strong military remains today as a result.

Alabama went further than most states in protecting herself against military power by forbidding the legislature from appropriating money to the army for longer than one year.¹⁷

At first, most states did not even allow their citizens to bear arms, but gradually the fear of privately-owned weapons subsided. Only three of the early Bills of Rights allowed citizens to bear arms. These states were North Carolina¹⁸, Pennsylvania¹⁹, and Vermont.²⁰ However, the states created to the west of the coastal area guaranteed the right to bear arms in their first Bills of Rights. Their reason was necessity and the hard, dangerous life of the "frontier." Also, some of the older states began to lose their fear of an armed citizenry after 1800. The states which included the right were Kentucky in 1792²¹, Tennessee in 1796²², Ohio in 1802²³, Indiana in 1816²⁴, Mississippi in 1817²⁵, Connecticut in 1818²⁶, Alabama in 1819²⁷, Maine in 1819²⁸, Missouri in 1820²⁹,

¹⁷ Ibid., v. 1, p. 98.

¹⁸ Ibid., v. 5, p. 2788.

¹⁹ Ibid., v. 5, p. 3083.

²⁰ Ibid., v. 6, p. 3741.

²¹ Ibid., v. 3, p. 1275.

²² Ibid., v. 6, p. 3424.

²³ Ibid., v. 5, p. 2911.

²⁴ Ibid., v. 2, p. 1059.

²⁵ Ibid., v. 4, p. 2034.

²⁶ Ibid., v. 1, p. 538.

²⁷ Ibid., v. 1, p. 98.

²⁸ Ibid., v. 3, p. 1648.

²⁹ Ibid., v. 4, p. 2163.

Michigan in 1835³⁰, and Arkansas in 1836.³¹

The states were not in complete accord about the right of home-owners to refuse to quarter soldiers, but even here most provided the same guarantee. This guarantee was that no soldier would be quartered in any house in time of peace without the consent of the owner; and in time of war, only in such a manner as the legislature might decide. The states ^{which} ~~the~~ did not promise the above to their citizens were North Carolina, Virginia, New York, Vermont, and Illinois.

All of the rest were angered by the forced quartering of British troops, so they promised their inhabitants that they would never again have to suffer such an outrage. The states which promised this protection were Maryland in 1776³², Massachusetts in 1780³³, New Hampshire in 1784³⁴, Pennsylvania in 1790³⁵, Delaware in 1792³⁶, Kentucky in 1792³⁷, Tennessee in 1796³⁸, Ohio in 1802³⁹, Indiana in 1816⁴⁰, Mississippi in 1817⁴¹, Connecticut in 1818⁴², Alabama in 1819⁴³, Maine in 1819⁴⁴, Missouri in 1820⁴⁵, Michigan in 1835⁴⁶, and Arkansas

³⁰ Ibid., v. 4, p. 1931.

³¹ Ibid., v. 1, p. 270.

³² Ibid., v. 3, p. 1688.

³³ Ibid., v. 3, p. 1892.

³⁴ Ibid., v. 4, p. 2456.

³⁵ Ibid., v. 5, p. 3101.

³⁶ Ibid., v. 1, p. 570.

³⁷ Ibid., v. 3, p. 1275.

³⁸ Ibid., v. 6, p. 3424.

³⁹ Ibid., v. 5, p. 2911.

⁴⁰ Ibid., v. 2, p. 1059.

⁴¹ Ibid., v. 4, p. 2034.

⁴² Ibid., v. 1, p. 538.

⁴³ Ibid., v. 1, p. 98.

⁴⁴ Ibid., v. 3, p. 1648.

⁴⁵ Ibid., v. 4, p. 2164.

⁴⁶ Ibid., v. 4, p. 1931.

in 1836.⁴⁷ This wide group points out the general agreement among states about the provision. This was the result of revolutionary grievances which remained strong well into the nineteenth century.

Several of the early Bills of Rights stated that no civilian shall be subject to martial law. This was an early fear of the military which subsided to some degree in later years. The states who did include the clause were Maryland in 1776⁴⁸, Massachusetts in 1780⁴⁹, New Hampshire in 1784⁵⁰, Vermont in 1786⁵¹, Tennessee in 1796⁵², and Ohio in 1802.⁵³

This extreme fear of the military was gradually reduced. In fact, the later Bills of Rights began providing a special right for men in military service. Beginning in 1790 with Pennsylvania⁵⁴, several of the new states promised that no person in military service during a time of war could be indicted for oppression or misdemeanor except by a military court or the grand jury. These new states were Kentucky in 1792⁵⁵, Delaware in 1792⁵⁶, Mississippi in 1817⁵⁷, Alabama in 1819⁵⁸, Maine in 1819⁵⁹, Missouri in 1820⁶⁰, and Michigan in 1835.⁶¹

There were only two unique military provisions in all of the Bills, and these were made by Vermont in 1777 and Tennessee in 1796.

⁴⁷ Ibid., v. 1, p. 270.

⁴⁸ Ibid., v. 3, p. 1689.

⁴⁹ Ibid., v. 3, p. 1893.

⁵⁰ Ibid., v. 4, p. 2457.

⁵¹ Ibid., v. 6, p. 3754.

⁵² Ibid., v. 6, p. 3424.

⁵³ Ibid., v. 5, p. 2911.

⁵⁴ Ibid., v. 5, p. 3100.

⁵⁵ Ibid., v. 3, p. 1275.

⁵⁶ Ibid., v. 1, p. 569.

⁵⁷ Ibid., v. 4, p. 2034.

⁵⁸ Ibid., v. 1, p. 97.

⁵⁹ Ibid., v. 3, p. 1647.

⁶⁰ Ibid., v. 4, p. 2164.

⁶¹ Ibid., v. 4, p. 1931.

Vermont promised that the people of her state had the sole right of regulating the internal police.⁶² And Tennessee guaranteed that no citizen would be compelled to bear arms if he would pay an equivalent to be ascertained by law.⁶³

The general consensus of opinion among all states regarding provisions of a military nature was probably the result of the great grievances against colonial misuse of the military. There was such hatred that long after fear of the British militia was removed, there remained a very real fear of strong military power. In later years the fear was reduced to realistic proportions, and citizens were allowed to own weapons. But it was still very evident, as the best example of a revolutionary grievance found in all state Bills of Rights.

⁶² Ibid., v. 6, p. 3740.

⁶³ Ibid., v. 6, p. 3724.

Chapter V

Elections and the Legislature

Provisions pertaining to elections are not as numerous as those relating to what officers should do after being elected. Therefore, included in this chapter are those rights and restraints granted to and imposed upon the legislature.

There were many states which did not even include the usual statement that all elections must be free and equal, meaning that each voter has an equal number of votes. Ohio, New York, Mississippi, Connecticut, Alabama, Maine and Michigan failed to add this clause. However, those states ^{which} did promise the right were North Carolina¹, Maryland², Pennsylvania³, and Virginia⁴ in 1776; Vermont in 1777⁵, Massachusetts in 1780⁶, New Hampshire in 1784⁷, Pennsylvania in 1790⁸, Delaware⁹ and Kentucky¹⁰ in 1792, Tennessee in 1796¹¹, Indiana in 1816¹², Illinois in 1818¹³, Missouri in 1820¹⁴, and Arkansas in 1836.¹⁵

¹F. N. Thorpe, ed., v. 91, part 3, State Constitutions, v. 5, p. 2787.

²Ibid., v. 3, p. 1687.

³Ibid., v. 5, p. 3082.

⁴Ibid., v. 7, p. 3813.

⁵Ibid., v. 6, p. 3740.

⁶Ibid., v. 3, p. 1891.

⁷Ibid., v. 4, p. 2455.

⁸Ibid., v. 5, p. 3100.

⁹Ibid., v. 1, p. 568.

¹⁰Ibid., v. 3, p. 1274.

¹¹Ibid., v. 6, p. 3422.

¹²Ibid., v. 2, p. 1058.

¹³Ibid., v. 2, p. 981.

¹⁴Ibid., v. 4, p. 2163.

¹⁵Ibid., v. 1, p. 269.

In 1776, North Carolina¹⁶, Virginia¹⁷, and Pennsylvania¹⁸ guaranteed that elections would be held often in order to restrain the government from oppression. Vermont also made this promise in 1777¹⁹, but she withdrew it from her Bill of Rights of 1793.²⁰ Massachusetts assured the right to frequent rotation of offices by election in 1780.²¹ It seems strange that these early states were the only ones to mention the frequency of elections in their Bills of Rights. Later states began to include this as a part of the constitution, not of the Bill of Rights. The Bill of Rights seems to be a more appropriate location, however, for this guarantee is fundamental to our democracy.

Vermont included, in her 1786 Bill, the promise that elections would forever be fair and without corruption.²²

A mere handful of states gave qualifications to vote and to be elected in their Bills of Rights. Pennsylvania's document of 1776 states that "all free men having sufficient interest in and attachment with the community have a right to elect officers or be elected into office."²³ Vermont's Constitution-makers of 1777 felt that all free men should attain this right²⁴, Massachusetts²⁵ and New Hampshire²⁶ left the qualifications up to the legislature. Maryland

¹⁶ Ibid., v. 5, p. 2783.

¹⁷ Ibid., v. 5, p. 3082.

¹⁸ Ibid., v. 7, p. 3813.

¹⁹ Ibid., v. 6, p. 3740.

²⁰ Ibid., v. 6, p. 3752.

²¹ Ibid., v. 3, p. 1890.

²² Ibid., v. 6, p. 3752.

²³ Ibid., v. 5, p. 3082.

²⁴ Ibid., v. 6, p. 3740.

²⁵ Ibid., v. 3, p. 1891.

²⁶ Ibid., v. 4, p. 2455.

imposed a property qualification on the right of suffrage in 1776²⁷, but Mississippi in 1832 added a clause to her 1817 Constitution which abolished the property qualification for suffrage.²⁸ None of the other states included qualifications for voting in their Bills of Rights, though most of them dealt with the subject elsewhere in their Constitutions.

The term of office was also limited by a few states. New Hampshire's 1784 Constitution guarded against hereditary offices in the government.²⁹ Mississippi in 1832 stated that no person may be appointed for life or good behavior, for all offices of government must have a limited term.³⁰

Maryland evidenced fear of a strong executive when she provided that rotation of offices in the executive is absolutely necessary.³¹ She stated further that no person may hold more than one office at a time.³² This fear of power located in one office was not exhibited so strongly by any of the other states.

The sparsity of election provisions is very evident, and even those states which do provide for elections in their Bills are not in agreement as to the rights to be exercised. The only general provision was that elections should be "free and equal," but even this right was not included in all of the documents.

It is interesting to note also that, with the exception of Mississippi, only the very early works contained reference to elections.

²⁷ Ibid., v. 3, p. 1687.

²⁸ Ibid., v. 4, p. 2050.

²⁹ Ibid., v. 4, p. 2454.

³⁰ Ibid., v. 4, p. 2051.

³¹ Ibid., v. 3, p. 1689.

³² Ibid.

This is as stated before, because the later states attached election provisions to other parts of the Constitution.

There were several limitations on representatives by most states, however. All but Virginia, New York, Vermont, Delaware, and Connecticut forbade the legislature from passing ex post facto laws. Maryland³³, Massachusetts³⁴, Pennsylvania³⁵, Kentucky³⁶, Mississippi³⁷, Connecticut³⁸, and Alabama³⁹ prohibited the legislature from attainting particular persons of treason or felony.

Maryland's document of 1776 introduced the idea that the meeting place of the legislature should be fixed and no other place should be used unless necessity should require it.⁴⁰ Maryland⁴¹, Massachusetts⁴² and New Hampshire⁴³ stated in their first Bills of Rights that the legislature should be convened frequently. These same states guaranteed freedom of speech to the legislators while attending meetings.

New Hampshire prohibited the legislature from granting a pension except in considerable cases, and then only for a year.⁴⁴ And Kentucky forbade them from granting a title of nobility.⁴⁵

³³ Ibid., v. 3, p. 1688.

³⁴ Ibid., v. 3, p. 1892.

³⁵ Ibid., v. 5, p. 3101.

³⁶ Ibid., v. 3, p. 1275.

³⁷ Ibid., v. 4, p. 2034.

³⁸ Ibid., v. 1, p. 538.

³⁹ Ibid., v. 1, p. 98.

⁴⁰ Ibid., v. 3, p. 1687.

⁴¹ Ibid.

⁴² Ibid., v. 3, p. 1892.

⁴³ Ibid., v. 4, p. 2457.

⁴⁴ Ibid.

⁴⁵ Ibid., v. 3, p. 1276

1776 to 1840 were years of trial for the new governments.

Restrictions were placed upon the legislatures to insure the people against subjugation. This fear was an important part of the revolutionary philosophy, but even today one hears talk of the fallacies and dangers of "big government."

Election procedures are also a contemporary point of disagreement. The national government left this power to the states, and at first few provisions were made by them. After 1800, states began to incorporate their ideas concerning suffrage in a separate part of the constitution, so the topic is removed from the scope of this paper. However, one will note that there was, from the very beginning, more disagreement among the states over this element of government than any other. This disparity continues today, and it is my opinion that the reason lies in the failure of the national government to establish general principles for elections.

Chapter VI

Judicial Provisions

Judicial provisions, particularly those pertaining to procedure, were relatively uniform throughout the states. Virginia's Bill of Rights of 1776 contained only rights of procedure. All other states guaranteed these rights plus others, and the list of additional provisions became longer in later years. As state courts gained more experience, the people learned what rights they must promise their people both for fairness and expediency.

However, the procedural rights remained as the basis of all other judicial rights. These rights as presented in Virginia's Constitution were: in all capital and criminal punishments, a man has the right to know his accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, to counsel for his defense, and to a speedy trial by an impartial jury of men from the vicinity in which the crime took place without whose unanimous consent he can not be convicted. An accused shall never be compelled to give evidence against himself and shall never be subject to excessive bail or cruel and unusual punishment. And in all controversies respecting property and in all suits between two or more men, he shall have the right to a trial by jury.¹

Every state within the scope of this paper guaranteed these procedural rights in their first Bill of Rights, with the one

¹ F. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 7, p. 3813.

exception of New York. Her 1821 Constitution did not include them, and it was not until 1846 that New York's citizens were promised the usual procedural rights.

All other states: North Carolina in 1776², Pennsylvania in 1776³, Maryland in 1776⁴, Vermont in 1777⁵, Massachusetts in 1780⁶, New Hampshire in 1784⁷, Kentucky in 1792⁸, Delaware in 1792⁹, Tennessee in 1796¹⁰, Ohio in 1802¹¹, Indiana in 1816¹², Mississippi in 1817¹³, Connecticut in 1818¹⁴, Illinois in 1818¹⁵, Maine in 1819¹⁶, Alabama in 1819¹⁷, Missouri in 1820¹⁸, Michigan in 1835¹⁹, and Arkansas in 1836²⁰ included the procedural rights.

Most Bills of Rights promised that all courts would be open and that inhabitants would have remedy for injustices or injuries without delay, denial, or sale of this right. This was in essence a guarantee of equality under the law. Those states which included the right were Maryland²¹ and North Carolina²² in 1776, Massachu-

² Ibid., v. 5, p. 2787.

³ Ibid., v. 5, p. 3083.

⁴ Ibid., v. 3, p. 1688.

⁵ Ibid., v. 6, p. 3741.

⁶ Ibid., v. 3, p. 1891.

⁷ Ibid., v. 4, p. 2455.

⁸ Ibid., v. 3, p. 1275.

⁹ Ibid., v. 1, p. 569.

¹⁰ Ibid., v. 6, p. 3422.

¹¹ Ibid., v. 5, p. 2910.

¹² Ibid., v. 2, p. 1059.

¹³ Ibid., v. 4, p. 2033.

¹⁴ Ibid., v. 1, p. 538.

¹⁵ Ibid., v. 2, p. 982.

¹⁶ Ibid., v. 3, p. 1647.

¹⁷ Ibid., v. 1, p. 97.

¹⁸ Ibid., v. 4, p. 2163.

¹⁹ Ibid., v. 4, p. 1931.

²⁰ Ibid., v. 1, p. 270.

²¹ Ibid., v. 3, p. 1688.

²² Ibid., v. 5, p. 2788.

setts in 1780²³, New Hampshire in 1784²⁴, Vermont in 1786²⁵, Pennsylvania in 1790²⁶, Delaware in 1792²⁷, Kentucky in 1792²⁸, Ohio in 1802²⁹, Indiana in 1816³⁰, Mississippi in 1817³¹, Connecticut in 1818³², Illinois in 1818³³, Maine in 1819³⁴, Alabama in 1819³⁵, and Missouri in 1820³⁶. Delaware in 1792³⁷ and Tennessee in 1796³⁸ clarified this right by stating that suits may be brought against the state by its citizens only in a manner decided by the legislature.

Special provisions regarding treatment of prisoners were made by many states. Maryland³⁹, New Hampshire⁴⁰, Ohio⁴¹, Indiana⁴², Illinois⁴³, and Arkansas⁴⁴ promised that all penalties would be apportioned to the nature of the crime, for a multitude of sanguinary laws are "both impolitic and unjust."⁴⁵ Tennessee⁴⁶,

²³ Ibid., v. 3, p. 1891.

²⁴ Ibid., v. 4, p. 2455.

²⁵ Ibid., v. 6, p. 3752.

²⁶ Ibid., v. 5, p. 3101.

²⁷ Ibid., v. 1, p. 570.

²⁸ Ibid., v. 3, p. 1275.

²⁹ Ibid., v. 5, p. 2910.

³⁰ Ibid., v. 2, p. 1058.

³¹ Ibid., v. 4, p. 2034.

³² Ibid., v. 1, p. 358.

³³ Ibid., v. 2, p. 982.

³⁴ Ibid., v. 3, p. 1648.

³⁵ Ibid., v. 1, p. 97.

³⁶ Ibid., v. 4, p. 2163.

³⁷ Ibid., v. 1, p. 569.

³⁸ Ibid., v. 6, p. 3423.

³⁹ Ibid., v. 3, p. 1688.

⁴⁰ Ibid., v. 6, p. 2456.

⁴¹ Ibid., v. 5, p. 2911.

⁴² Ibid., v. 2, p. 1059.

⁴³ Ibid., v. 2, p. 982.

⁴⁴ Ibid., v. 1, p. 270.

⁴⁵ Ibid., v. 5, p. 2911.

⁴⁶ Ibid., v. 6, p. 3423.

Ohio⁴⁷, and Indiana⁴⁸ guaranteed that no person would be "treated with unnecessary rigor" while confined in jail. Delaware included a provision in her 1792 Bill of Rights which stated "in the construction of jails a proper regard shall be had to the health of prisoners."⁴⁹

After 1790, all new Bills of Rights added that all prisoners shall be bailable by sufficient sureties before conviction, except those being held for capital offenses. These states, in chronological order, were: Pennsylvania in 1790⁵⁰, Delaware in 1792⁵¹, Kentucky in 1792⁵², Tennessee in 1796⁵³, Ohio in 1802⁵⁴, Indiana in 1816⁵⁵, Mississippi in 1817⁵⁶, Illinois⁵⁷ and Connecticut⁵⁸ in 1818, Alabama in 1819⁵⁹, Maine in 1819⁶⁰, Missouri in 1820⁶¹, Michigan in 1835⁶², and Arkansas in 1836.⁶³ Missouri also added to her 1820 Bill of Rights a clause which provided that when a jury is unable to reach a decision, the court may release the accused on bail until the next trial.⁶⁴

All of the documents written after 1790 with the exception of those by Connecticut and Michigan also provided that no conviction

⁴⁷ *Ibid.*, v. 5, p. 2910.

⁴⁸ *Ibid.*, v. 2, p. 1059.

⁴⁹ *Ibid.*, v. 1, p. 569.

⁵⁰ *Ibid.*, v. 5, p. 3101.

⁵¹ *Ibid.*, v. 1, p. 569.

⁵² *Ibid.*, v. 3, p. 1275.

⁵³ *Ibid.*, v. 6, p. 3423.

⁵⁴ *Ibid.*, v. 5, p. 2910.

⁵⁵ *Ibid.*, v. 2, p. 1059.

⁵⁶ *Ibid.*, v. 4, p. 2034.

⁵⁷ *Ibid.*, v. 2, p. 982.

⁵⁸ *Ibid.*, v. 1, p. 538.

⁵⁹ *Ibid.*, v. 1, p. 98.

⁶⁰ *Ibid.*, v. 3, p. 1648.

⁶¹ *Ibid.*, v. 4, p. 2163.

⁶² *Ibid.*, v. 4, p. 1931.

⁶³ *Ibid.*, v. 1, p. 270.

⁶⁴ *Ibid.*, v. 4, p. 2163.

would work corruption of blood or forfeiture of estate. This idea was begun in Maryland in 1776 when she provided that there would be no forfeiture of estate for any crime except murder or treason.⁶⁵

The later states to guarantee the provision in its expanded form were: Pennsylvania in 1790⁶⁶, Kentucky⁶⁷ and Delaware⁶⁸ in 1792, Tennessee in 1796⁶⁹, Ohio in 1802⁷⁰, Indiana in 1816⁷¹, Illinois in 1818⁷², Alabama⁷³ and Maine⁷⁴ in 1819, Missouri in 1820⁷⁵, Mississippi in 1832⁷⁶, and Arkansas in 1836.⁷⁷

Another protection for those who have been convicted appeared after 1790: namely, the guarantee that the writ of habeas corpus would never be suspended unless rebellion or a public danger should require it. All of the states after 1790, except Arkansas, included this promise.

Pennsylvania was the instigator of still another provision in 1790.⁷⁸ This was that debtors would not be imprisoned, except in a case of fraud, if they had delivered their estate to creditors as prescribed by law. Later Bills of Rights containing the guarantee were those of Kentucky⁷⁹, Tennessee⁸⁰, Ohio⁸¹, Indiana⁸², Missis-

⁶⁵ Ibid., v. 3, p. 1688.

⁶⁶ Ibid., v. 5, p. 3101.

⁶⁷ Ibid., v. 3, p. 1275.

⁶⁸ Ibid., v. 1, p. 570.

⁶⁹ Ibid., v. 6, p. 3423.

⁷⁰ Ibid., v. 5, p. 2911.

⁷¹ Ibid., v. 2, p. 1059.

⁷² Ibid., v. 2, p. 982.

⁷³ Ibid., v. 1, p. 98

⁷⁴ Ibid., v. 3, p. 1648.

⁷⁵ Ibid., v. 4, p. 2164.

⁷⁶ Ibid., v. 4, p. 2050.

⁷⁷ Ibid., v. 1, p. 270.

⁷⁸ Ibid., v. 5, p. 3101.

⁷⁹ Ibid., v. 3, p. 1275.

⁸⁰ Ibid., v. 6, p. 3423.

⁸¹ Ibid., v. 5, p. 2911.

⁸² Ibid., v. 2, p. 1059.

Mississippi⁸³, Illinois⁸⁴, Alabama⁸⁵, and Missouri.⁸⁶

Vermont⁸⁷, Ohio⁸⁸, and Illinois⁸⁹ provided that no one would be transported out of the state for the trial of an offense committed within the state.

New York's judicial provisions are so different that they deserve special treatment. In the 1821 Bill of Rights, New York provided that "no member of this state shall be disfranchised or deprived of any of the rights and privileges secured to any citizen...except by the law of the land."⁹⁰ She promised the right to trial by jury, to the writ of habeas corpus, and the rights not to be tried twice for the same crime, nor to be compelled to bear witness against oneself.⁹¹ The document also stated that no court would be instituted unless the legislature established it.⁹²

New York granted very few judicial rights in her 1821 Constitution. For most states, however, judicial provisions were more numerous than any other. Through the courts, citizens could be assured that all their other rights would be upheld. Therefore, to writers of the Bills of Rights, details of judicial procedure and treatment of the accused were very important. As courts operated for a period of time, details became more important, and one sees that the later documents contained even more judicial provi-

⁸³ Ibid., v. 4, p. 2034.

⁸⁴ Ibid., v. 2, p. 982.

⁸⁵ Ibid., v. 1, p. 98.

⁸⁶ Ibid., v. 4, p. 2164.

⁸⁷ Ibid., v. 6, p. 3742.

⁸⁸ Ibid., v. 5, p. 2911.

⁸⁹ Ibid., v. 2, p. 982.

⁹⁰ Ibid., v. 5, p. 2647.

⁹¹ Ibid., p. 2648.

⁹² Ibid.

sions. Pennsylvania's 1790 Constitution was a great instigator in adding the more lengthy provisions.

Chapter VII
Economic Provisions

Constitution-makers did not include many matters of economic concern in their Bills of Rights until the 1790's. This is probably because economic rights can not be determined until people live under a system of government for some time.

The new government was to create a different social order which would require changes in the economic life. Although the seeds of democracy were planted in 1776, they were not to mature until years, even centuries, later. But economic guarantees were among the first flowers of this maturation.

Maryland, North Carolina, and Pennsylvania did guarantee a few economic rights in 1776, however. North Carolina¹ and Maryland² were way ahead of their time in declaring that "monopolies are contrary to the genius of a free state and therefore ought not to be allowed."³ Maryland was extremely far-sighted in abolishing the poll tax in her 1776 Bill of Rights.⁴ No state was to abolish the tax again until 1802 when Ohio abolished the poll tax. Maryland's Constitutional delegates were extremely far-sighted, particularly concerning economic matters, for they also provided that all property granted by Charles I to Lord Baltimore would remain in the hands of those entitled to it until the legislature decided differently.⁵ This was a very wise

¹F. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 5, p. 2783.

²Ibid., v. 3, p. 1690.

⁴Ibid., v. 3, p. 1687.

³Ibid.,

⁵Ibid., v. 3, p. 1686.

provision to ease the transition between two governments.

Pennsylvania added a clause to her Bill of Rights which was economic in nature, but which was actually a definition of the philosophical idea of the Social Compact, Section 8 of Pennsylvania's Bill of Rights which states "since every person has a right to the protection of the state, he has a reciprocal duty to contribute his proportion of money or personal service to it."⁶ It went on to say that no property could be taken without the consent of the owner or of his representatives.

Massachusetts in 1780⁷ and New Hampshire in 1784⁸ included a clause justifying individuals' contributions of money or service to the state by the social compact theory also. In fact, they used Pennsylvania's wording almost exactly.

Vermont in 1777 stated the same idea in a different manner. Section 2 of her Bill of Rights provides that property should be subservient to public use when necessity requires it, but just compensation should always be made to the owner.⁹ This guarantee of "just compensation" was to become a very important, widely used right in later years. Every state which adopted a Bill of Rights from then until 1840 included the provision, with the two exceptions of Delaware and Arkansas.

Pennsylvania in 1790¹⁰, Kentucky in 1792¹¹, and Tennessee in 1796¹² provided that property may not be taken without just compensa-

⁶ Ibid., v. 3, p. 3083.

⁷ Ibid., v. 3, p. 1691.

⁸ Ibid., v. 4, p. 2455.

⁹ Ibid., v. 6, p. 3740.

¹⁰ Ibid., v. 5, p. 3101.

¹¹ Ibid., v. 3, p. 1275.

¹² Ibid., v. 6, p. 3423.

tion to the owner or the consent of his representatives, that no law may be made which impairs the obligation of contracts, and that estates of those who have committed suicide should descend as in a case of natural death. Tennessee also felt that monopolies should not be allowed because they are contrary to the idea of a free state.¹³

Ohio in 1802 guaranteed that private property would not be taken for public use unless just compensation was made to the owner, and that no law could be made which would impair the obligation of a contract.¹⁴ She did not include either the provision regarding monopolies or the one concerning the estates of those who committed suicide. Ohio declared, however, that every association of persons could apply to the legislature for incorporation.¹⁵ This was a veiled attempt to control monopolies. And as mentioned previously, Ohio was the first state after Maryland in 1776 to abolish the poll tax.¹⁶ No other state before 1840 abolished this tax.

A provision common to all of the states after 1802 except Arkansas was that pertaining to just compensation for property taken for public use. These states were: Indiana in 1816¹⁷, Mississippi in 1817¹⁸, Connecticut¹⁹ and Illinois²⁰ in 1818, Alabama²¹ and Maine²²

¹³ Ibid.

¹⁴ Ibid., v. 5, p. 2911.

¹⁵ Ibid., v. 5, p. 2912.

¹⁶ Ibid., v. 5, p. 2911.

¹⁷ Ibid., v. 2, p. 1058.

¹⁸ Ibid., v. 4, p. 2034.

¹⁹ Ibid., v. 1, p. 358.

²⁰ Ibid., v. 2, p. 982.

²¹ Ibid., v. 1, p. 97.

²² Ibid., v. 3, p. 1648.

in 1819, Missouri in 1820²³, New York in 1821²⁴, and Michigan in 1835.²⁵

Another common guarantee was the one stating that no law may be made which impairs the obligation of a contract. Those states guaranteeing this right were: Indiana in 1816²⁶, Mississippi in 1817²⁷, Illinois in 1818²⁸, Alabama²⁹ and Maine³⁰ in 1819, Missouri in 1820³¹, Michigan in 1835³², and Arkansas in 1836.³³ This list includes all Bills of Rights written between 1802 and 1840 with the exception of Connecticut and New York.

Three more states during this period provided in their Bills of Rights that the estates of those who commit suicide would descend as in a case of natural death. These states were Mississippi in 1817³⁴, Alabama in 1819³⁵, and Missouri in 1820.³⁶

After 1818, there were several unique guarantees of an economic nature. For example, Illinois promised in 1818 that all public lands would remain public forever and could never be leased, sold, or divided.³⁷ She also promised her inhabitants that the mode of

²³ Ibid., v. 4, p. 2168.

²⁴ Ibid., v. 5, p. 2648.

²⁵ Ibid., v. 4, p. 1932.

²⁶ Ibid., v. 2, p. 1059.

²⁷ Ibid., v. 4, p. 2034.

²⁸ Ibid., v. 2, p. 982.

²⁹ Ibid., v. 1, p. 98.

³⁰ Ibid., v. 3, p. 1648.

³¹ Ibid., v. 4, p. 2164.

³² Ibid., v. 4, p. 1932.

³³ Ibid., v. 1, p. 270.

³⁴ Ibid., v. 4, p. 2034.

³⁵ Ibid., v. 1, p. 98.

³⁶ Ibid., v. 4, p. 2164.

³⁷ Ibid., v. 2, p. 982.

levying a tax would be by valuation, so that every person would pay in proportion to the value of his property.³⁸ Illinois' Bill of Rights was the only one to contain a clause pertaining to banks. The document stated that no bank may ever be created in the state except as provided by law.³⁹

New York was another state to provide unusual economic guarantees. In her 1821 Constitution, she provided that the proceeds of all lands belonging to the state would go to the support of public schools. And the proceeds from toll on all navigable waters would be applied to the completion of new communications.⁴⁰ However, an amendment to this guarantee was made in 1833. At this time the people felt that the legislature should be allowed to alter the recipients of proceeds from these public sources.⁴¹

In 1821, New York felt that it was necessary to clarify the standing of grants of land from Great Britain. At this time, the Bill of Rights provided that all grants of land made by the King after October 14, 1775, would be null and void, but obligations of contracts made before this date would remain in force.⁴² New York had not included the promise that no law would be made which would impair the obligation of a contract, and this was her way of dealing with the problem for the time.

The 1821 Bill of Rights of New York contained two other very unusual provisions: first, that no lottery would be authorized⁴³

³⁸ Ibid.

³⁹ Ibid., p. 983.

⁴⁰ Ibid., v. 5, p. 2649.

⁴¹ Ibid., v. 5, p. 2652.

⁴² Ibid., v. 5, p. 2650.

⁴³ Ibid., v. 5, p. 2649.

and second, that the purchase or sale of land from or to Indians could be made only with the consent of the legislature.⁴⁴

The economic provisions found in state Bills of Rights reveal more clearly than any other the change and increasing complexity of life in the United States. As Andrew C. McLaughlin has so aptly stated,

"Life was comparatively simple and comparatively free from social and economic problems (in the early years). The later development of constitutions mirrors the increasing complexity of the social and economic order."⁴⁵

As the popular base of our democracy grew, and as the middle class became more powerful and more wealthy, it was necessary to guarantee that inhabitants would not exploit each other. For no longer did the rules of "noblesse oblige" offer adequate protection. In the early years, this custom was still in force. Even though titles of nobility had been abolished, the aristocracy continued to play its role. Word of honor was adequate until a changing social order required new safeguards.

One will note also that it was the northern and mid-western states ^{which} provided more economic guarantees than the southern states. At this time the aristocracy of the plantations still carried on in the old tradition. This was to change, but only after a brutal, horrible Civil War forced the south to keep pace with its more popularly democratic neighbors.

⁴⁴Ibid.

⁴⁵Andrew C. McLaughlin, A Constitutional History of the United States, (New York, D. Appleton-Century Co., Inc., 1936), p. 114.

Chapter VIII

Miscellaneous Provisions

There are some states with rights which do not fit under any general heading. The fact that there are not many of these, however, indicates the general agreement among states as to which rights were important.

Several states felt that it was necessary to guarantee the right of emigration from one state to another. Pennsylvania was the first to make such a promise to her inhabitants in 1776.¹ Vermont made a similar guarantee in 1777.² She also granted the right to form a new state in vacant countries, but this was deleted from the new Bill of Rights of 1793.³

Other states to provide for the right of emigration were: Kentucky in 1792⁴, Mississippi in 1817⁵, Indiana in 1816⁶, Alabama in 1819⁷, and Missouri in 1820.⁸

The early states were very conscious of State's-rights. All of the first Bills of Rights stated that the people of the state had the sole right of regulating the internal government and police. At the time of transfer of power to the national government, they wanted to be certain to retain their sovereignty in internal affairs.

¹F. N. Thorpe, ed., House Documents, v. 91, part 3, State Constitutions, v. 5, p. 3084.

²Ibid., v. 6, p. 3741.

³Ibid., v. 6, p. 3754.

⁴Ibid., v. 3, p. 1276

⁵Ibid., v. 4, p. 2034.

⁶Ibid., v. 2, p. 1059.

⁷Ibid., v. 1, p. 98.

⁸Ibid., v. 4, p. 2164.

Pennsylvania⁹, North Carolina¹⁰, Maryland¹¹, Virginia¹², Massachusetts¹³, and New Hampshire¹⁴ were the states ^{which} ~~was~~ first adopted Bills of Rights and were therefore more fearful than others of giving up their powers.

North Carolina¹⁵ and Tennessee¹⁶ outlined their boundaries in complete detail. This was a protection against the huge state of Virginia which bordered them. Maryland was powerful enough not to need the extra precaution.

Maryland¹⁷ and Delaware¹⁸ provided that their inhabitants would be entitled to the common law of England unless it should be altered in the future by the legislature, or unless certain aspects of the common law might be repugnant to the rights and privileges contained in their constitution. New York in 1821 added that common laws in force after April 19, 1775, which have not expired or been repealed shall remain as the law of New York until altered by the legislature.¹⁹

Maryland²⁰, New Hampshire²¹, and Massachusetts²² were very aware of legal rights. They were the only states to require the

⁹ Ibid., v. 5, p. 3081.

¹⁰ Ibid., v. 5, p. 2787.

¹¹ Ibid., v. 3, p. 1686.

¹² Ibid., v. 7, p. 3814.

¹³ Ibid., v. 3, p. 1890.

¹⁴ Ibid., v. 4, p. 2454.

¹⁵ Ibid., v. 5, p. 2788.

¹⁶ Ibid., v. 6, p. 3421.

¹⁷ Ibid., v. 3, p. 1686.

¹⁸ Ibid., v. 1, p. 567.

¹⁹ Ibid., v. 5, p. 2649.

²⁰ Ibid., v. 3, p. 1689.

²¹ Ibid., v. 4, p. 2457.

²² Ibid., v. 3, p. 1893.

independence of judges in their Bills of Rights. They guaranteed that judges could hold no other offices and that they could retain their positions only so long as they remained independent. New Hampshire also promised her judges that they would receive honorable salaries.²³

Tennessee made a special provision regarding the freedom of the Mississippi River. Her 1796 Bill of Rights guaranteed that the river would forever remain open to equal participation by all, and that under no circumstances would special privileges be granted.²⁴

Maine²⁵, Missouri²⁶, and Michigan²⁷ defined treason in their Bills in 1819, 1820, and 1835, respectively. Treason was defined as levying war against the state or adhering to its enemies, giving them aid and comfort. Conviction of treason was not to be given without testimony of two witnesses to the overt act or an open confession in court.

Vermont in 1777²⁸ and Ohio in 1802²⁹ prohibited slavery and involuntary servitude. These two states appear to have been more interested than others of the time in "popular democracy" and equal rights. Why they of all states would be the first to abolish slavery, I cannot explain. After 1840, all states took a stand on the slavery issue, but these two stand out as being the first to recognize the problem which was to develop.

²³ Ibid., v. 4, p. 2457.

²⁴ Ibid., v. 6, p. 3424.

²⁵ Ibid., v. 3, p. 1648.

²⁶ Ibid., v. 4, p. 2164.

²⁷ Ibid., v. 4, p. 1931.

²⁸ Ibid., v. 6, p. 3740.

²⁹ Ibid., v. 5, p. 2909.

Ohio further provided that paupers would not be discriminated against in entrance to public institutions.³⁰ Maryland was the only other state to grant rights to paupers. She had provided in 1776 that paupers would not be taxed.³¹

Several states concluded their Bills of Rights with the statement that all rights contained in the Bills are exceptions ~~to~~^{to} the general powers of government and shall remain inviolable until altered by amendment or revision. The states ~~who~~^{which} concluded with this guarantee were Maryland in 1776³², Kentucky in 1792³³, Indiana in 1816³⁴, Maine³⁵ and Alabama³⁶ in 1819, and Arkansas in 1836.³⁷

It is very noteworthy that there were not many miscellaneous provisions, for this fact proves further the consensus of opinion among all states. To create a durable government required agreement and this we certainly had.

³⁰ Ibid., v. 5, p. 2911.

³¹ Ibid., v. 3, p. 1687.

³² Ibid., v. 3, p. 1690.

³³ Ibid., v. 3, p. 1276.

³⁴ Ibid., v. 2, p. 1059.

³⁵ Ibid., v. 3, p. 1649.

³⁶ Ibid., v. 1, p. 98.

³⁷ Ibid., v. 1, p. 270.

Chapter IX

Conclusion

The study of state Bills of Rights has pointed out a remarkable similarity in the political philosophy of areas with widely different interests and problems. This fact is given as evidence of the unity which has been able to withstand a Civil War, several depressions, and major catastrophes, such as war. The population of the United States is composed of many races and ethnic groups; each bringing with it a unique political heritage. But these people have somehow been able to combine their many beliefs into a workable philosophy based upon the idea of popular sovereignty. Rights were guaranteed to assure the retention of this sovereignty. It would seem that such an individualistic theory would result in anarchy, but the American people believed, just as firmly, in the doctrine of the Social Compact. According to this doctrine, certain individual rights are sublimated to the general good. Man, when he enters into a society, gains many benefits, but he must accept obligations so that everyone will enjoy these benefits equally. He therefore submits to laws to which he has given his consent through representatives. This is the "essence" of our system of government.

The changes which later Bills of Rights reveal are changes in degree and emphasis, not in fundamentals. The early Bills of Rights contained more revolutionary grievances than later ones. And later Bills of Rights were better able to outline judicial and economic rights. Experience in living with the system of government

was necessary before these two areas could be developed and before rights pertaining thereto could be comprehensively outlined.

Throughout the years, however, the "essence" continued as a strong foundation. The basis of popular sovereignty, combined with a belief in the social compact, acted as a guide to the rights contained in the states' documents. For this reason, our many Bills of Rights have acted as a framework within which our government operates. The Bills of Rights state the fundamental law and political theory of the people, therefore these documents act as the basis of all government as outlined in the rest of the constitution.

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