

# Washington Law Review

---

Volume 45 | Issue 3

---

5-1-1970

## Contents

anon

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

---

### Recommended Citation

anon, Table of Contents, *Contents*, 45 Wash. L. & Rev. ix (1970).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol45/iss3/1>

This Table of Contents is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

# WASHINGTON LAW REVIEW

Volume 45, Number 3, May, 1970

## CONTENTS

### Articles

- The Role of A Bill of Rights in a Modern State Constitution  
Introduction 453

- Why a State Bill of Rights? *Vern Countryman* 454

Historical perspective reveals that the recent activism of the federal courts in the area of political and civil rights was largely necessitated by the unwillingness of state courts to recast those rights in molds adapted to our changing society. Federal supplementation of the states' inaction in this field has now regrettably caused many state courts to assume a posture of even more begrudging conservatism in the interpretation and implementation of our political and civil rights. In this background, Professor Countryman advocates state legislative initiative to formulate new and broad general principles for protecting our fundamental rights. He identifies three major reasons for such action—the desirability of expanding federal interpretations of constitutional rights, the need to extend several constitutional protections to application against the States, and the need to delineate new rights not comprehended within the Bill of Rights appended to the United States Constitution.

- New Horizon for a State Bill of Rights *Arold A. Morris* 474

Professor Morris, examines the current scope of the Washington State Constitution, originally designed for a frontier people in a railroad economy, and deficient in a number of elements critical to the Washington society of today and 100 years hence. With particular emphasis on what new rights must be set forth in textual guarantees, the author examines the problems and implications of a menagerie of changed circumstances and contemporary social ills, including racial integration, invasions of privacy by public and private modes of surveillance, the deterioration of the life and structures of our cities, the threat of administrative abuses in the distribution of public benefits, and the overwhelming need for improvement and adaptation of our educational program. Professor Morris appends a challenging and forthright proposal for a Bill of Rights for the State of Washington, expressly designed to preserve our libertarian heritage and yet anticipate the trends of the next century.

- Standing, The 'New Property,' and the Costs of Welfare: Dilemmas in American and West German Provider-Administration  
*Robert Dugan* 497

The overwhelming increase in governmental welfare, subsidy, and licensing programs in the United States' recent history has prompted substantial academic controversy and judicial uncertainty over the requisites for standing to challenge the decisions of our provider-administration. Looking beyond our traditional theories, Mr. Dugan examines recent decisions of the West German Federal Administrative Court with respect to mandatory and discretionary governmental benefits which are deemed to create rights in their intended beneficiaries. He argues that the most sound analytical approach to the problem as we now view it would be to apply a "violated right" standard, since

injury depends upon violation of a right and, in the public sector as in the private, rights may be defined by their allocatory content. However, recognition of such rights may be self-defeating in the end, since even that approach disregards the fundamental issue of the need for sovereign prerogative over economic controls. The author concludes that creation of rights in our economic system may in fact be inconsistent with the need to maintain that system.

The Lake Chelan Case—Another View *Edward A. Rauscher* 523

The court's decision in this case has been widely discussed. The author reviews the status of authority contrary to the position advanced by Professor Corker in his recent article, and concludes that the opinion does not apply to tidelands or shorelands, that the Supreme Court has neither declared nor implied a general prohibition against development of private lands underlying navigable waters in Washington, and that to do so in the future the Court would find it necessary to overturn some well-established (legislative, administrative and judicial) principles as to the character of private ownership of such lands in this state.

## Comments

Convening a Constitutional Convention in Washington Through the Use of the Popular Initiative 535

Using Washington as a model for discussion this comment explores the doctrines which have limited the application of the flexible principles of popular sovereignty to the problems presented in the calling of a Constitutional Convention. The author concludes: that the people of the state of Washington can call such a convention by the use of the popular initiative; that earlier notions that changes in state governmental structure could only be accomplished by strict conformity to the procedures in the existing constitution have been supplanted by the resurgence of the doctrines of popular sovereignty; and that the broad theoretical underpinnings for popular sovereignty decry the soundness of the application of any maxims of interpretation which would deny the people, acting through the initiative, the power to call a Constitutional Convention.

Regional Planning and Local Autonomy in Washington Zoning Law 593

The rapid urbanization of large areas of Washington call for effective land use planning and zoning. At present, regional and state land use plans are implemented, if at all, only by the grace of local zoning officials. This comment discusses the means available for adjusting the relationships between local zoning officials and extra-municipal planners so as to preserve local autonomy without destroying the effectiveness of state and regional plans. The authors conclude that the adoption of portions of the Model Land Development Code would accomplish this result.

## Recent Developments

Consumer Protection—Lotteries: "Bonus Bingo"—The Great Safeway Lottery—*State ex rel. Schillberg v. Safeway Stores, Inc.*, 75 Wash. Dec. 2d 351, 450 P.2d 949 (1969) 623

Immigration Law—Deportation: What Fraud Hath Brought Together Let No Man Put Asunder—*Muslemi v. Immigration and Naturalization Service*, 408 F.2d 1196 (9th Cir. 1969) 637

Mortgages—Notice—Vendor and Purchaser—Vendor Not Charged With Constructive Notice of Subsequent Mortgage of Contract Purchaser's Equity—Mortgagee Required to Notify Vendor to Protect Security Interest.— <i>Kendrick v. Davis</i> , 75 Wash. Dec. 2d 470, 452 P.2d 222 (1969)	645
Motor Vehicles—Drunken Driving—Implied Consent Comes to Washington—Initiative Measure No. 242, Ch. 1, Laws of 1969 (adopted by the people November 5, 1968)	656
Real Property—Vendor and Purchaser—Implied Warranty: Builder-Vendor Impliedly Warrants Fitness of Home for Intended Purposes to Initial Purchaser— <i>House v. Thornton</i> , 76 Wash. Dec. 2d 586, 457 P.2d 199 (1969)	670
Book Notes	677

---

Copyright 1970 all rights reserved by the Washington Law Review Association

---

THE WASHINGTON LAW REVIEW is published four times each year by students of the University of Washington School of Law. Second-class postage paid at Seattle, Washington and additional offices. Subscription, \$9.50 a year in United States and Canada; \$10.00 elsewhere. Single issue \$3.00. Prices for back issues and volumes are available on request. If subscription is to be discontinued at expiration, notice to that effect should be sent to the Business Manager; otherwise subscriptions will be automatically renewed.

Citations conform to *A Uniform System of Citation* (11th ed. 1967), copyright by the *Columbia, Harvard, and University of Pennsylvania Law Reviews* and the *Yale Law Journal*.

Member, National Conference of Law Reviews.

The REVIEW gratefully acknowledges complimentary subscriptions to the National Reporter System and Washington advance sheets, presented by the West Publishing Company and the Bancroft-Whitney Company.

Address all correspondence to: Washington Law Review  
 306 Condon Hall  
 University of Washington  
 Seattle, Washington 98105